DIRECTORS' RESPONSIBILITIES AS LIQUIDATORS IN THE DISSOLUTION OF LIMITED LIABILITY COMPANIES

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Abstract

This article aims to examine the legal regulations regarding the responsibilities of directors as liquidators in the dissolution of limited liability companies. This journal article employs a normative legal research method that utilizes legislative and conceptual approaches by reviewing the Limited Liability Company Law. The regulations for the dissolution of limited liability companies are outlined in the Company Law Article. The dissolution of a company must be followed by liquidation carried out by a liquidator. In terms of appointing a liquidator, the Company Law only provides for the appointment of a liquidator similar to the general appointment of directors. This provision of the Company Law does not necessarily provide legal certainty for creditors or interested parties. Based on this, the issues can be raised regarding how the legal certainty of the regulation of Directors as Liquidators in the dissolution of Limited Liability Companies is established, as well as what the Responsibilities of Directors as Liquidators are in the presence of conflicts of interest within Limited Liability Companies.

Keywords: *Directors, Liquidator, Limited Liability Company*

1. INTRODUCTION

A business is a formal organization formed when individuals pool their resources and create a common agreement, with the financial foundation made up of shares. This organization possesses its own assets which are separate from the individual assets belonging to the partners (Rastuti, 2015); therefore, the company has been designated as a legal entity based on the guidelines outlined in Article 1, paragraph 1 of Law No. 40 of 2007 regarding Limited Liability Companies, also known as UUPT. In order to operate successfully, the company needs to have clear goals and motivations that align with legal requirements, public standards, and ethical norms (Sinaga, 2018).

Limited liability companies are generally more favored by business actors compared to other forms of companies (Utami & Sudiarawan, 2021). Capital owners want their limited liability company to operate for an extended period as outlined in the company's articles of association. Nevertheless, there is a chance that this optimism could be dashed. Under certain conditions or due to particular factors, a corporation with limited liability might be forced to cease operations, essentially resulting in its termination. A limited liability company is a legal entity that arises based on legal processes, so if a limited liability company ends, it must also go through a legal process. Article 142, paragraph (1) of the UUPT regulates the provisions regarding the dissolution of limited liability companies as follows:

a) Based on the decision of the General Meeting of Shareholders (GMS);
b) Because the duration of its establishment as stipulated in the articles of association has expired;
c) Based on a court ruling;

d) After the Commercial Court permanently annuls the bankruptcy, there are not enough assets left to cover the costs associated with bankruptcy proceedings;
e) The assets of the company that have been declared bankrupt are considered insolvent according to the Bankruptcy Law and Debt Payment Suspension Act; or
f) The company is mandated to go through the process of liquidation due to the revocation of its business license as per the laws and regulations in place.

After a company is dissolved, its legal entity status does not automatically vanish. Therefore, every outgoing letter from the company should include the phrase "in liquidation" after the company's name to inform third parties. The phrase “in liquidation” indicates that the company is currently settling and concluding matters related to its assets, particularly debt settlement. In the liquidation process, a liquidator is needed. A liquidator is an individual chosen to oversee the process of liquidating a company, responsible for handling and distributing the company's assets.

A company as a legal entity is a person (legal subject) created by law, and therefore it is an artificial person (Rumokoy, 2011) that does not have will or carry out legal acts without assistance from the existing organs within the company. Thus, the aims and objectives of a limited liability company have two aspects: on one hand, it serves as the source of authority for the limited liability company to act, and on the other hand, it acts as a limitation on the scope of authority of the relevant limited liability company (Swarnagita et al., 2024).

According to Article 1, paragraph 2 of the UUPT, the company's organs consist of the General Meeting of Shareholders (referred to as GMS), the board of directors, and the board of commissioners. The board of directors, which is an organ within the company, plays a very important role in the management of the company. According to Article 92, paragraph (1) of the UUPT, the board of directors is responsible for running the company in alignment with its goals and objectives, putting the company's interests first. The board of directors is tasked with the duty of representing the company, meaning each member must diligently fulfill their responsibilities with a strong sense of accountability towards the company's interests. The responsibility of conducting management affairs must also be executed in a manner that demonstrates good faith (Harahap, 2019). In a one-person company, all the roles and responsibilities of the organs are carried out by the same individual who serves as both the shareholder and director concurrently (Iswari & Rudy, 2023).

When a company or corporation is dissolved, it results in legal implications that strip the Board of Directors and the management of their power and control over the company's assets. This entity was originally created for the sole purpose of conducting business. Dissolution can result in the Company no longer being able to carry out its business activities. The decision to dissolve a limited liability company can be made in a General Meeting of Shareholders (GMS). The shareholders of the limited liability company form the General Meeting of Shareholders (GMS), where the voting rights play a significant role in determining the fate of the company's dissolution. Shareholders' voting rights are determined under Article 84, paragraph (1) of the UUPT, wherein it is specified that each share entitles the holder to one vote, unless otherwise stated in the company's articles of association. However, in practice, the GMS process concerning the dissolution of a limited liability company often encounters obstacles such as issues among the organs of the limited liability company, conflicts of interest, and the absence of

shareholders at the GMS. If the dissolution of the limited liability company cannot be achieved through the GMS, the dissolution can be pursued by applying for a court order for dissolution of the company. The district court can receive a petition for dissolution from the organs of the limited liability company (Triatama et al., 2023).

If the request submitted by the organs of the limited liability company is granted by the judge, the judge may appoint a liquidator in the liquidation process of the limited liability company. Based on Article 146, paragraph (2) of the UUPT, it is explained that the court order also includes the appointment of a liquidator. If the district court fails to appoint a liquidator in its order, the ruling cannot be executed, as there is no liquidator to carry out the settlement. If the GMS forum does not appoint a liquidator during the dissolution of the company, the board of directors will act as the liquidator as determined by the district court.

The appointment of a liquidator can come from an independent external party or from within the company, or if the dissolution occurs due to a decision from the GMS, the expiration of the establishment period, or the revocation of bankruptcy based on a commercial court decision, but the GMS does not decide to appoint an independent liquidator, then the Board of Directors shall legally act as the liquidator as stated in Article 142, paragraph (3) of the UUPT, which states that if a company is dissolved because of decisions made by the shareholders' meeting, and the time period specified in the company's founding documents has passed, or if the company is saved from bankruptcy by a court decision and the shareholders' meeting doesn't choose a liquidator, then the Board of Directors will take over as the liquidator.

In the event of dissolution, the Directors appointed as liquidators may perform actions as liquidators. The steps involved in finalizing the dissolution of the company consist of documenting and gathering all assets, establishing a plan for how assets will be distributed, settling debts with creditors, allocating any leftover assets to shareholders, and addressing any additional tasks required. In the case of liquidation where the Directors are appointed as liquidators, the role of the Directors in the company automatically changes to that of liquidators. The appointment of the directors as liquidators in the liquidation process has implications for an organization called the Indonesian Liquidator Professional Association (PPLI), which filed a judicial review of the UUPT with the Constitutional Court on the grounds that the presence of directors is not independent and is part of the company's problems (Syarif, 2018).

Problems arise due to intentional factors, indicating that the company's directors have acted with bad faith in managing the company (Dalle & Gultom, 2023). In corporations, abuse of power, conflicts of interest, and corruption are prevalent issues (Destria, 2021). In the context of liquidation, a form of conflict-of-interest manifests as self-dealing, where there is a conflict between the interests of the director and those of the company (Marsella, 2016). An example of self-dealing is when a director engages in transactions for personal benefit, potentially harming the interests of other creditors (Prayoga & Syaâ, 2020). Liquidation under such conflicts of interest will affect creditors, who will lack certainty and legal protection regarding the liquidation process of the company. The appointment of a director as a liquidator may allow the director to evade responsibility during the liquidation settlement.

The appointment of directors as liquidators in the liquidation process has sparked debate among various groups, both individuals and organizations. This research pertains to the Constitutional Court Decision No. 29/PPU-XVI/2018 regarding a judicial review

of the UUPT filed by the Legal Team of the Indonesian Liquidator Professional Association (PPLI), which essentially rejected the material review submitted. The rejection of this material review impacts the regulation that the appointment of directors as liquidators does not require certification; Indonesian legislation concerning the liquidator profession also does not include rules requiring certified liquidators. The UUPT only addresses the role of liquidators in the dissolution of a company. As a result, some parties believe that certification for liquidators is unnecessary.

The regulations regarding Limited Liability Companies have been structured accordingly; however, their implementation often encounters issues, where certain matters occurring in society are not explicitly stated in the legislation. Although there are no specific regulations regarding certification or the appointment of directors as liquidators, in practice, certification for liquidators is deemed necessary. This is exemplified in Decision No. 29/Pdt.P/2020/PN.Poso, where the applicant sought an independent liquidator with a certificate (Salsabilla & Suryono, 2023). The absence of certification or specific regulations concerning directors appointed as liquidators raises the potential for liquidation to proceed in bad faith due to unclear responsibilities of the directors as liquidators in the dissolution of the limited liability company. This situation adversely affects creditors, who will lack certainty and legal protection during the liquidation process of the company.

2. RESEARCH METHODS

This study utilizes normative legal research, incorporating both a statutory approach and a conceptual approach. Normative legal research is characterized by examining documents and gathering data through literature studies, as well as collecting journal materials using descriptive methods by looking at issues currently occurring in society. A descriptive analysis technique is utilized in this research to analyze the answers to the research problems. Normative legal research can function to provide legal arguments in cases of gaps, ambiguities, and conflicts of norms (Diantha & Made, 2017). The information utilized in this study was obtained through a review of literature, which entails compiling a range of data and legal resources, such as primary, secondary, and tertiary legal materials. These materials were then sorted, documented, cited, condensed, and analyzed based on the research requirements (Parwati & Sarjana, 2019).

3. RESULTS AND DISCUSSION

3.1. Legal Regulation of Directors as Liquidators in the Dissolution of Limited Liability Companies

The liquidator occupies a central position in the liquidation process of a company. The liquidator's duties are extensive and demand specialized skills, as they will take on the tasks typically performed by the board of directors, commissioners, and the general meeting of shareholders (GMS). In other words, the liquidator holds a position equivalent to that of the board of directors in terms of exercising management authority. Additionally, the appointment and duties of the liquidator are based on the principle of trust (fiduciary duty), meaning that the liquidator cannot be equated with employees who are subject to an employment contract. The position of the liquidator, according to Vander Hayden as quoted by Soekardono, is that of a civil law trustee (trustee) of the party that appointed them (Prayoga & Syaâ, 2020).

The liquidator can be appointed based on the GMS or a court decision. However, the appointment of the liquidator to carry out the liquidation can also come from independent external parties or from the internal parties of the company itself. The board of directors serves as the internal party responsible for liquidating the company in the event of dissolution due to a decision made at a general meeting of shareholders, the expiration of the establishment period specified in the articles of association, or the cancellation of a bankruptcy declaration according to legal requirements. If the company fails to designate an impartial liquidator in accordance with the regulations outlined in Article 142 paragraph (3) of the Company Law. In practice, the appointed liquidator may be someone who is an expert in the field (Simanjuntak, 2024), meaning a person outside the company's management structure, but the directors of the company may also be appointed as liquidators. In carrying out their duties, the liquidator has the authority to form a team to assist in the liquidation process (Susilowati et al., 2016).

After the Board of Directors receives the court's decision to act as the liquidator in the dissolution of the Limited Liability Company, they can take actions as the liquidator. The board plays a crucial role in managing the company's affairs and is held responsible by either the General Meeting of Shareholders (GMS) or the court overseeing the liquidation process.

The actions taken in the dissolution of the limited liability company, in accordance with Article 149 paragraph (1) of the Company Law, include recording and collecting assets, determining the method of asset distribution, paying creditors, distributing the remaining assets from the liquidation to shareholders, and taking other necessary actions. The board, acting as the liquidator, will record and collect both assets and liabilities.

Based on this recording, the liquidator will sell non-cash assets. After all assets of the Limited Liability Company are sold, the proceeds from the sale will be used to pay the creditors. If there are remaining proceeds from the sale of the company's assets, the liquidator will distribute the remaining amount to the shareholders either in the form of assets on a pro-rata basis or in cash as agreed (Hidayah & Firmansyah, 2020). Before the money from selling the assets of the Limited Liability Company is handed out, the liquidator must publish a plan of how it will be distributed, along with a comprehensive list of debts and a schedule for payments, in newspapers and official gazettes (Paula, 2021).

Article 142 paragraph (2) of the Company Law regulates the consequences of dissolution, stating that if a company is dissolved, it must be followed by liquidation conducted by a liquidator or curator, and the company cannot conduct any legal actions except as necessary to settle all company affairs in the context of liquidation. Moreover, Articles 152 paragraphs (1) and (2) of the Company Law clearly define the duties of the liquidator during the liquidation process. It states that the liquidator is accountable to either the GMS or the appointing court for the liquidation they oversee, while the curator is answerable to the overseeing judge for the liquidation process.

If a liquidation process is conducted by the liquidator or, in this case, the board of directors of the Limited Liability Company, the liquidator must account for their duties to the GMS or the District Court that appointed them. If the accountability is accepted, the liquidator can be released from their responsibilities. Afterwards, in a month, the liquidator must publish the liquidation outcome in a newspaper and inform the minister. Upon receiving this information, the minister will officially declare the Limited Liability

Company's legal status terminated in the official gazette and delete the company's name from the registry (Paula, 2021).

Thus, the board of directors of a Limited Liability Company can play a role in the liquidation process. The board can act as the liquidator to settle and complete the liquidation of a company that cannot continue its business activities. The board can become the liquidator if no liquidator is appointed during the GMS, allowing the board to petition the District Court. After receiving the court's ruling, the board acting as the liquidator in the settlement and completion of the liquidation is fully responsible for all the assets of the Limited Liability Company. Once the liquidation is completed, the liquidator must report the results of the liquidation to the GMS and the District Court.

Article 142, paragraph (6) stipulates that the rules governing the board of directors also apply to liquidators in terms of their appointment, temporary removal, termination, powers, duties, responsibilities, and oversight. From this provision, it can be understood that the processes applicable to directors also apply to liquidators appointed through the General Meeting of Shareholders (GMS). The qualifications needed to appoint a liquidator are comparable to the qualifications for appointing a director. This is governed by Article 93 paragraph (1) of the Company Law, which stipulates that the person must have the legal capacity to execute legal actions, with the exception that they have not performed any within the last five years before their appointment:

a) Been declared bankrupt;
b) Serving on the Board of Directors or Board of Commissioners, the individual was convicted of being responsible for the company's bankruptcy declaration; or
c) Convicted of a crime that impacts government finances or is tied to the financial industry.

In other words, the Company Law does not outline specific obligations for a party or director to serve as a liquidator. Nonetheless, the criteria for appointing liquidators are similar to those for appointing board members. The lack of strict criteria allows for anyone to become a liquidator, regardless of their education or profession, as long as they are considered suitable by the appointing authority. Additionally, the Company Law does not specify whether the GMS can appoint members of the company's organs other than directors to act as liquidators.

One of the implications of appointing directors as liquidators, as explained above, is found in the Constitutional Court Decision Number 29/PUU-XVI/2018, dated February 14, 2019, which examined Article 142 paragraph (2) letter a and paragraph (3) of the Company Law. The petition was submitted by liquidators affiliated with the Indonesian Liquidator Professional Association (PPLI). In its considerations, the Constitutional Court stated that the applicant's argument requesting that every liquidator must possess a certification in liquidating companies, be independent, and not serve as directors of the company in liquidation was not legally justified. Based on these considerations, the Constitutional Court rejected the application in its entirety. Therefore, the definition of liquidators in Company Law emphasizes that anyone can conduct liquidation, regardless of their professional experience, except in instances of insolvency.

In legal certainty theory, the relationship between justice and legal certainty must be considered, even if the content is less fair or does not align with legal objectives. However, exceptions can be made when the conflict between the content of the legal order and justice is substantial. Therefore, when the legal order appears unjust, it may be

disregarded. Legal certainty requires the availability of clear and transparent legal rules, and the government must consistently and concretely apply these legal rules, intending for the legal rules to consistently resolve legal disputes.

When linking the meaning of the legal certainty theory mentioned above with the provisions of the Company Law, particularly in Article 142 paragraph (6) and the Constitutional Court Decision Number 29/PUU-XVI/2018 dated February 14, 2019 regarding the requirements for appointing liquidators, the general nature of these requirements merely legitimizes the company's ability to appoint directors as liquidators without considering that the appointment of directors as liquidators must also take into account that directors cannot simultaneously act as shareholders or creditors of the company. If this occurs, the liquidator may face conflicts of interest and may engage in self-dealing transactions, potentially harming the interests of other creditors. Therefore, considering the need for a professional organization for liquidators is essential to ensure the establishment of ethical standards and good work guidelines.

3.2. Responsibilities of Directors Appointed as Liquidators in the Event of Conflicts of Interest in Limited Liability Companies

Responsibility refers to the obligation to fulfill all duties and tasks assigned to an individual as a result of the authority received or held. Every authority generates rights, responsibilities, and obligations to execute and account for actions. The Board of Directors is the governing body of the Company with complete authority and accountability for overseeing the Company's operations, aligning with its goals, and serving as the Company's representatives in various capacities, in compliance with the regulations specified in the Articles of Association under the Indonesian legal framework. In this context, it is examined within the common law system, where a director possesses authority and responsibilities divided into two aspects (Kusumawardani, 2013):

a) Obligations based on fiduciary principles with good faith and responsibility.
b) Obligations to manage the Company well and act with expertise.

The general responsibilities of a liquidator are similar to those of the directors of a Limited Liability Company. The responsibilities during the period before the Limited Liability Company is dissolved apply mutatis mutandis to the liquidator from the moment of the General Meeting of Shareholders (GMS), as the liquidator has the obligation to carry out the dissolution of the Company in good faith and in service to the parties that appointed them, in line with the objectives of the Company outlined in the company prospectus (Kusumawardani, 2013).

If the directors or liquidators act in bad faith, they violate their fiduciary duty and the obligation to comply with applicable laws. A conflict of interest arises when an individual exploits their position and authority (whether intentionally or unintentionally) for personal, familial, or group interests, thereby preventing the entrusted duties from being carried out objectively and potentially causing harm (Kementrian Perindustrian Republik Indonesia, 2024).

When directors are performing their duties and exercising their power, they must prioritize the company's interests over their own if they engage in illegal activities that create a conflict of interest. Directors may pursue personal interests as long as they do not harm the company, meaning their actions must not lead to losses for the company. In a limited liability company, the directors are vital for the company to function. The

company cannot survive without directors, and vice versa. Therefore, the presence of directors is crucial for a limited liability company. Directors are protected in their activities by the principle of limited liability, which safeguards shareholders from liabilities exceeding the value of their shares in the company (Kasih, 2022).

A director of a company is considered to have a conflict of interest if the following situations arise (Marsella, 2016):

a) They are involved in legal proceedings representing the company, but the opposing party has a relationship with the director.
b) A director must not take hidden or concealed profits from a company transaction (known as Corporate Opportunity).
c) Transactions for personal gain (Self-Dealing) occur.

The factors leading to conflicts of interest can arise directly or indirectly and include both internal and external factors. The internal factors involve transactions conducted within the company for personal benefit by the directors. Any planned transactions that involve a conflict of interest must be disclosed in advance, as this information is crucial for shareholders in deciding whether to dissolve the limited liability company (Lendrawati & Sonyatan, 2014). Liquidators have the following obligations:

a) The liquidator is required to act in the interest of the company's dissolution.
b) The liquidator must carry out the liquidation according to appropriate policies.
c) The liquidator is obligated to perform the liquidation in good faith and with full responsibility, which includes the following:

- Liquidation must be conducted in a fiduciary manner (fiduciary duty).
- The liquidation must be executed for a proper purpose (duty to act for a proper purpose).
- The liquidator must comply with statutory regulations in carrying out the liquidation (statutory duty).
- The liquidator has a loyalty duty in executing the liquidation.
- The liquidator must avoid conflicts of interest (conflict of interest).

As previously mentioned, one of the general obligations of the liquidator is to avoid conflicts of interest. The liquidator must prevent the occurrence of conflicts of interest while managing the dissolution of the company, as any action involving a conflict of interest is categorized as bad faith, which affects investors' decisions. External factors include transactions where directors act for their own personal gain rather than for the benefit of the company, often conducted secretly.

Some forms of conflict of interest that may arise during liquidation include:

a) The liquidator using the company’s funds during liquidation, whether those are company funds or money obtained from the liquidation and collection of assets, for personal benefit.
b) Utilizing information from the liquidating company for personal gain.
c) Using their position to withhold or take some of the company's profits for personal interests.
d) Conducting transactions between themselves and the company undergoing liquidation.
e) Directing the sale of the liquidating company's assets to parties affiliated with the liquidator or competing with the liquidating company itself.

The liquidator can be held accountable if, in carrying out their duties, they commit wrongful acts or negligence, such as through lawsuits from shareholders if such errors result in losses. If a director appointed as a liquidator is proven to have a conflict of interest due to self-dealing transactions during the company's dissolution, the liquidator will be responsible if it is shown that the director, either directly or indirectly, had a conflict of interest that affected their obligations.

Company directors in a limited liability company are legally required to take personal responsibility for any losses incurred by the company due to their own negligence or fault (Fikriya, 2020). Thus, a director serving as a liquidator who is proven to have a conflict of interest may be temporarily or permanently dismissed by interested parties (which include the Attorney General for public interest reasons, shareholders, directors, the Board of Commissioners, creditors, and/or other stakeholders) and can be held personally liable for any resulting losses, both criminally and civilly, based on liability due to fault. According to the Indonesian Civil Code, particularly Articles 1365 and 1366, this principle states that a person can only be held legally responsible if there is an element of fault in their actions. The Civil Code does not distinguish between intentional wrongdoing (*opzet-dolus*) and negligence (*culpa*). Therefore, in such cases, shareholders, creditors (third parties), or the relevant authorities can file legal claims against the directors appointed as liquidators for violating the law, ensuring that justice is served. This aligns with Thomas Aquinas's theory of Justice, which posits that justice is the constant and perpetual will to give each person their due, allowing interested parties to seek compensation.

4. CONCLUSION

The appointment of a liquidator to carry out liquidation can come from either independent external parties or internal parties of the company. Internally, the directors can act as liquidators, as stipulated in Article 142 paragraph (3) of the Company Law (UUPT). However, the UUPT does not specifically regulate the special requirements for any party or director to be appointed as a liquidator. The general requirements for appointing directors serve as a reference. The general nature of these requirements means there is no consideration that appointing directors as liquidators should also take into account the stipulation that directors cannot simultaneously hold shares in the company. If this occurs, the liquidator would face a conflict of interest and may engage in self-dealing transactions, which could harm the interests of other creditors.

Factors leading to conflicts of interest involving directors or liquidators can arise both directly and indirectly from internal and external elements, potentially resulting in losses for interested parties. In the context of liquidation, if the directors serving as liquidators have been proven to have a conflict of interest due to self-dealing transactions during the dissolution, they may face temporary or permanent dismissal by the interested parties. This dismissal can be based on the principle of liability due to fault, ensuring fairness as articulated in the theory of justice. This theory emphasizes a consistent and unwavering will to provide each individual their due rights. Consequently, interested parties can demand personal accountability for any losses incurred, pursuing both criminal and civil liability as appropriate.

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