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LEGAL ANALYSIS OF LIMITED LIABILITY COMPANIES AFTER BEING DECLARED BANKRUPTCY IN INDONESIA

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ABSTRACT
When a debtor is unable to pay their debts and cannot pay them, they may file for bankruptcy. In order to avoid harming connected parties, companies that have been declared bankrupt in this instance must be dissolved and have their legal entity status changed. When a limited liability company is declared bankrupt, it does not instantly cease operations and dissolve; rather, it continues to exist legally. In some situations, the limited liability company stays in business, avoids bankruptcy, and is still able to conduct its operations. This research poses two questions: first, what happens to a Limited Liability Company that files for bankruptcy? Second, what obligations does a Limited Liability Company have when a subsidiary files for bankruptcy? Normative juridical research methodology was applied in this instance. Secondary data is research in law that is done by reading existing literature. According to the study's findings, a general meeting of shareholders must be held before liquidation can begin. This means that, in the event that an LLC is declared bankrupt, its ability to manage and control its assets is also terminated.

KEY WORDS
Legal analysis, limited liability company, bankruptcy, Indonesia.

The business world of today is evolving at an extremely fast pace. This is because the community's needs—both material and service—are growing (Rapaccini et al., 2020). Due to these growing demands, business actors have been prompted to create legal entities in order to generate revenue and profits (Pucciarelli & Kaplan, 2016).According to Sentosa (2007), a legal entity is an entity other than humans that, in this context, has the ability to act legally and is endowed with rights and obligations that allow it to have legal interests towards other individuals or entities. In this instance, the legal subject being discussed is a Limited Liability Company, which is capable of engaging in legal proceedings (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 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.

When a debtor is unable to pay their debts and becomes collectible, they file for bankruptcy (Nuriskia & Novaliansyah, 2021). Insolvent businesses are typically unable to carry on with their operations, and as a result, they dissolve (Coad, 2014). The laws governing dissolution in Limited Liability Companies are found in Articles 142 through 146. Except for activities within the settlement process, also known as liquidation, the company that is going to be dissolved is no longer in operation.The requirement of dissolution of a PT makes the ending of business activities legally compliant. One could argue that the final step in resolving the complex situation involving the company's future is the dissolution of a PT. The dissolution needs to be overseen through to the end. in order to avoid altering the legal situation that would cause a liability to persist as long as the dissolution has not been

completed. In this instance, the dissolution of a Limited Liability Company has an impact on the status of the legal entity it is. 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.

METHODS OF RESEARCH

Normative juridical research is the kind that is employed. This study, which is legal in nature, was carried out by looking through secondary data—literature materials. The goal of this study is to track changes in the legislation pertaining to limited liability companies that are declared bankrupt as well as the consequences that follow. The secondary data used to gather this research's data is made up of primary, secondary, and tertiary legal materials. The main sources of legal information in this case are two laws: Law Number 40 of 2007 about Limited Liability Companies and Law Number 37 of 2004 about Bankruptcy and Suspension of Debt Payment Obligations.Secondary legal material, which either explains or supports the primary legal material, is used to support the primary legal material (Benuf & Azhar, 2020). Journals, articles, research findings, and other materials pertinent to the subject under discussion are used as secondary legal materials in this case. Tertiary legal materials, like magazines and online data, will provide clarification on primary and secondary legal materials.

RESULTS AND DISCUSSION

Responsibility of Company For Its Subsidiary Indicated as Bankrupt

Group companies, also known as conglomerations, are always fascinating subjects to discuss because of the potential for unchecked growth and development to lead to monopolies over commercial networks. However, group companies are thought to be essential to accelerating the economic development of a state. The relationship that exists between the companies that make up a group can be characterized as that between legal entities that are a part of the group; these entities can take the form of limited incorporation. Among other reasons, a high or low degree of ownership interrelation can lead to this kind of relationship. There is a tight relationship between them in terms of organizational relations, financial management, and business operating policies. Stated differently, an organization managed by a single central leader or by a group of leaders follows a common style and approach (Emmy Simanjuntak, 1997).

In the event of a legal deed, the company, as a legal entity supervised by a board of directors, represents the interests of the company's stakeholders representatively. This is done in accordance with the fiduciary duties principle, which requires the stakeholders to manage the company as closely as possible to the goal and purpose of incorporation as specified in the bylaws of incorporation. The board of directors is subject to fiduciary duties in carrying out its roles as incorporation representative and manager (Munir Fuadi, 2002).

Parent companies can be held accountable for the operations of their subsidiaries in order to delve into the independent responsibility of a legal entity, particularly the responsibility of a subsidiary; in this scenario, personal contracts may also be entered into. For instance, it is designed to guarantee the loan of its subsidiary through the creation of limited, personal, or corporate guarantees (Gatot Supramono, 2007).

It is possible to hold a holding company accountable for the actions of its subsidiaries in a united economy. The Co Policy Decider theory, which is applied to the process and structure of a holding company's accountability, states that when a holding company meddles excessively in the management and operations of a subsidiary—as it would in a centralized company group—it may be deemed to have influenced the decision made by the subsidiary. In this instance, the holding company is regarded as a "co decider," meaning that

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it is possible to include a certain limit in order to be held legally responsible through joint responsibility (Munir Fuadi, 1996).

Within this Holding Company, a subsidiary is defined as an independent legal entity with the right to carry out its own legal actions; the parent company bears no liability for the legal actions carried out by the subsidiary. The limited liability principle in this holding company shields the parent company, which is the subsidiary's shareholder, from liability for amounts greater than the investment value in the event that the subsidiary is unable to fulfill its legal obligations to third parties.

Every business that engages in business activities is typically inextricably linked to the loan matters that are made in order to augment its capital business. A subsidiary's unique business activity needs to be distinct from that of the parent company. Additionally, the subsidiary faces some challenges in operating its business. It's possible that the subsidiary will be declared bankrupt if it is unable to repay its mature debt (loan). Within the context of bankruptcy, a subsidiary may be regarded as a distinct legal entity. As a result, subsidiaries ought to be covered by the bankruptcy law provisions. The loan is an obligation stated or that can be stated in an amount of money in either Indonesian or foreign currency, either directly or that will occur in the future or contingent, because the agreement or law that should be obeyed by the debtor but is not gives the creditor the right to get its fulfillment from the debtor's wealth. This is stated in Article 1 clause 6 of Law Number 37 of 2004 about Bankruptcy and Loan Repayment Obligation Postponement.

When a subsidiary files for bankruptcy, the parent company should be held accountable for the subsidiary's legal documents if the parent company signs a contract that the subsidiary and its third party enter into, whereby the subsidiary serves both the creditor and the debtor. If the parent company acts as a corporate guarantee over the loan agreement that the subsidiary enters into as both a creditor and a debtor, it may also be held accountable. The parent company is accountable for the loan made by the subsidiary when it assumes the role of corporate guarantee.

Limited Liability Company's Implications After Declaring Bankruptcy

There are undoubtedly consequences for a PT's legal entity status when it dissolves. According to Adjie (2018), a Limited Liability Company Legal Entity in Indonesia does not automatically cease operations upon filing for bankruptcy. The Limited Liability Company forfeits its ability to oversee and control its assets upon filing for bankruptcy (Sikka & Stittle, 2019). This is in accordance with the law's Article 143, paragraph 1 which says the following: 1). Until the liquidation is finished and the liquidator's accountability is acknowledged by the GMS or the court, the Company does not lose its status as a legal entity. (2) Starting at the time of dissolution, the phrase "in liquidation" is appended to the Company's name in every exit letter.

The article's provisions are related to Article 142, which stipulates that one of the reasons for the company's dissolution could be that it is in bankruptcy, or that bankruptcy could be revoked as a result of a commercial court decision that has been declared insolvent and has permanent legal force. In terms of an LLC's consequences following a bankruptcy declaration, the debtor will legally forfeit the authority to oversee any assets included in the bankruptcy property (Anggraeni, 2021).

This is computed starting from the time the bankruptcy statement ruling is made. Depending on the receiver's assessment of the company's future business prospects, bankruptcy has an impact on how a business operates or fails following the bankruptcy ruling (Mai et al., 2019). This is made possible by the following clauses found in Article 104 of the UUK and PKPU: (1) The receivership may carry on the debtor's business after they are declared bankrupt, even if the statement of bankruptcy judgment is filed for cassation or judicial review, subject to the temporary creditor committee's approval.(2) The receivership must obtain the supervising judge's approval in order to carry on with the sub-article mentioned business in the event that a creditor committee is not appointed in bankruptcy.

The provisions of this article lead to the conclusion that, under Indonesian law, a limited liability company's bankruptcy does not automatically result in the termination of the

business's operations, meaning that a bankrupt limited liability company retains the ability to manage and control its assets. Furthermore, once a bankruptcy declaration decision is made, the debtor's legal status is altered to that of an incompetent party, making it impossible for him to control or manage his assets or pursue legal action. Since the judgment was issued, the debtor's assets have been included in the bankruptcy estate as a result of the bankruptcy declaration (Hamonangan et al., 2021). All assets that were in existence at the time the bankruptcy declaration was made, as well as any assets the debtor acquired while the debtor was in bankruptcy, are covered by Article 21 of the Bankruptcy Law. In this instance, the debtor no longer has ownership or management authority over the company's assets following its declaration of bankruptcy (Sukardi, 2021). Nonetheless, as long as it benefits the bankruptcy property, this scenario does not remove the debtor's ability to manage. This is in accordance with Limited Liability Company Law Article 142, Paragraph 2.

Based on the aforementioned, the Limited Liability Company Law states that a bankruptcy does not cause the dissolution of the company as long as the assets remain and are still usable for the business's operations after the bankruptcy is over. The company's bankruptcy merely serves as a justification for its inability to make payments to creditors. In this instance, the failure to pay must not cause harm to the creditor. Therefore, in the event that the business files for bankruptcy and is unable to pay its debts, the creditors may request that the District Court dissolve the business. A company can be dissolved based on the District Court's ruling. Settlement occurs after dissolution in order to grant the creditor the right to receive payment for the settlement's outcomes. For every company that dissolves, arrangements must be made because the company is a legal entity. The dissolved company's legal status is still in place to meet the needs of the liquidation process, but it is not permitted to pursue legal action until its assets have been settled as part of the liquidation process (Prasojo, 2013).

CONCLUSION

In this instance, companies that have been declared bankrupt are required to dissolve in order to modify their legal entity status and avoid causing losses to associated parties. Except within the framework of the liquidation process, the company is not permitted to pursue legal action following the dissolution of the PT. The General Meeting of Shareholders (GMS) can initiate the company's liquidation process beforehand. Other methods include notifying creditors of the PT's dissolution, managing and settling the company's assets, having the liquidator submit its accountability, having the liquidator announce the dissolution in newspapers, having the minister be notified of the PT's dissolution, having the PT's name removed, and having the Minister publish an announcement in the State Gazette of the Republic of Indonesia (BNRI). When a Limited Liability Company files for bankruptcy, it means that the debtor loses control over its assets and is no longer able to manage them. Nonetheless, as long as it benefits the bankruptcy property, this circumstance does not remove the debtor's ability to exercise management. This is in accordance with Limited Liability Company Law Article 142, Paragraph 2.

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