



## Legal Consequences of a Limited Liability Company's Bankruptcy Resulting from Unlawful acts Committed by the Directors

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### Abstract

This study focuses on an examination of the liability of directors who commit unlawful acts resulting in the bankruptcy of a limited liability company; and an analysis of the legal considerations in Supreme Court Decision No. 98 PK/Pdt.Sus/2010 regarding the Bankruptcy of a Limited Liability Company. This study employs a descriptive-analytical normative legal research method using a statutory approach and a case-based approach. A literature review was used to obtain secondary data, including primary, secondary, and tertiary legal materials. The data was then analyzed using qualitative data analysis methods. Based on the research results, it was concluded that unlawful acts committed by the Board of Directors that result in the bankruptcy of a Limited Liability Company consist of any acts that fail to fulfill the Board of Directors' obligations as managers of the LLC. The liability of directors who commit unlawful acts resulting in the bankruptcy of a limited liability company may be categorized as compensation for damages. The legal reasoning in Supreme Court Decision No. 98 PK/Pdt.Sus/2010 regarding the Bankruptcy of a Limited Liability Company contains an error in that it failed to include a consideration of the primary cause of the bankruptcy of PT. Rasico Industry, which was the unlawful acts of the Board of Directors, resulting in the company's inability to pay its debts to creditors. The judge failed to consider Article 97(3) in conjunction with Article 104(2) of the Limited Liability Company Law to include the Board of Directors' liability therein.

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### 1. Introduction

#### 1.1. Background

One type of company that frequently comes under legal scrutiny in Indonesia is the Limited Liability Company (hereinafter referred to as PT). A common issue faced by PTs is corporate bankruptcy. Generally, bankruptcy occurs when a company is unable to fulfill its debt obligations as required (Karundeng, 2015) <sup>[6]</sup>.

Currently, bankruptcy and debt restructuring are governed by Law No. 37 of 2004 on Bankruptcy and Debt Restructuring. According to Article 1 paragraph (1) of Law No. 37 of 2004, bankruptcy is a general seizure of all the debtor's assets, the administration and settlement of which are carried out by a trustee under the supervision of a supervising judge. This general seizure covers all of the debtor's assets, including the assets of a limited liability company (PT) declared bankrupt. This means that a limited liability company (PT), as a legal entity, can also be declared bankrupt, as it possesses assets that are separate from those of its shareholders (Purbandari, 2014) <sup>[12]</sup>.

Of course, the bankruptcy of a limited liability company (PT) is inextricably linked to the performance of its management, particularly the role of the Board of Directors in managing the company. Therefore, one of the causes of a limited liability company's bankruptcy is often unlawful acts committed by the Board of Directors. The Board of Directors is the corporate body

that has the authority and bears full responsibility for managing the company in the company's best interests, in accordance with the company's objectives and purposes, and represents the company both in and out of court in accordance with the provisions of the articles of association. Based on this definition, it is evident that the terms "duties," "authority," and "responsibilities" of the Board of Directors share a similar direction and purpose: to manage the company (in accordance with the company's articles of association) and to represent the company (both in and out of court) (Mulhadi, 2017)<sup>[8]</sup>.

Due to the position entrusted to and granted by the company to the Board of Directors under Law No. 40 of 2007 on Limited Liability Companies, the Board's actions sometimes exceed the scope of its authority. Although the Board possesses authority in the management and administration of the company, this authority is not unlimited. Several cases have arisen where the Board of Directors' actions, which were inconsistent with the company's objectives and purposes, resulted in the company suffering losses and facing bankruptcy. A common occurrence is when the Board of Directors commits an unlawful act in the course of managing the company (Asyhadie, 2011)<sup>[4]</sup>.

Simply put, an unlawful act is an act that clearly violates applicable laws and regulations. This means that any individual or business entity that violates the provisions of applicable laws and regulations may be said to have committed an unlawful act (in accordance with Article 1365 of the Civil Code) (Setyarini *et al.*, 2020).

Unlawful acts committed by the board of directors can ultimately cause the company to continue incurring losses and lead to a downward spiral in corporate management, which may eventually result in the company's bankruptcy. The bankruptcy of a limited liability company due to unlawful acts committed by the board of directors is certainly highly detrimental to the company, particularly to its shareholders. This is because, in the future, the PT will no longer be able to engage in legal or business activities to generate profits as it should, having been declared bankrupt. The PT's bankruptcy status will ultimately be declared in a Commercial Court ruling.

For a limited liability company (PT) that has been declared bankrupt, the debtor's rights to take all legal actions regarding its assets must be respected prior to the declaration of bankruptcy. This, of course, must be done while taking into account the debtor's contractual rights and obligations under applicable laws and regulations (Nating, 2004)<sup>[10]</sup>. Once the court pronounces a bankruptcy judgment in a public hearing against the debtor, the debtor loses the right to manage and control their assets (*persona standy in ludicio*), and the rights and obligations of the bankrupt party are transferred to the authority of the trustee to manage and control the estate. Therefore, if an individual or a company is unable to pay its debts and is in financial distress, it is legally possible—either at the debtor's own request or at the request of a creditor—for certain assets of the debtor to be seized to pay the creditors proportionally according to the amount of each creditor's claim (Nadirah, 2014)<sup>[9]</sup>.

As described above, one of the factors that can lead to a limited liability company (PT) being unable to fulfill its debt obligations to creditors, ultimately resulting in bankruptcy, is the commission of unlawful acts by the Board of Directors. In essence, the alleged unlawful acts committed by the Board of Directors must first be proven, so that it can be definitively

established that these acts caused the limited liability company to suffer losses, resulting in its inability to pay its debts to creditors, and ultimately leading to the company being declared bankrupt (Nating, 2004)<sup>[10]</sup>.

Subekti argues that proving means convincing the judge of the truth of the argument or arguments presented in a dispute. Thus, if it is indeed proven that the cause of the company's bankruptcy was an unlawful act committed by its directors, this fact may serve as a basis for consideration and is necessary to assess the extent of legal liability that can be imposed on the Board of Directors, which is the primary cause of the company's bankruptcy (Eddy, 2012).

One example of a company's bankruptcy resulting from unlawful acts by its directors is the case of PT Rasico Industry. It began with the Decision of the Central Jakarta Commercial Court No. 20/Pailit/2009/PN.Niaga. Jkt.Pst, and continued by the Supreme Court Cassation Decision No. 564 K/Pdt.Sus/2009, and finally concluded by the Supreme Court Review Decision No. 98 PK/Pdt.Sus/2010, which has become final and binding. In the aforementioned decision, PT Rasico Industry was essentially declared bankrupt. The bankruptcy status granted by the court to PT Rasico Industry stemmed from unlawful acts committed by the company's Board of Directors (Shietra, 2020)<sup>[16]</sup>.

The above incident demonstrates that the bankruptcy of a limited liability company may result from the actions of the company's Board of Directors. Therefore, it is necessary to examine the legal liability of the Board of Directors as a legal consequence of the limited liability company being declared bankrupt by the court. Thus, these legal consequences are not limited to the administration and liquidation of the company's bankruptcy estate but may also involve the Directors' personal assets (which become part of the bankruptcy estate as well), as these assets are the primary cause of the bankruptcy of the Limited Liability Company.

Given the background and the points raised above, it is worth examining in greater depth, particularly the legal liability of the Board of Directors for the bankruptcy of a limited liability company (PT) that has been ruled by the court as a result of unlawful acts committed by said directors. Further investigation is also needed regarding the assets included in the bankruptcy estate and the parties classified as bankrupt debtors, in the context of a PT's bankruptcy. This means the primary issue to be examined here concerns the liability of the Board of Directors who have committed acts detrimental to the PT. For this reason, it is also necessary to further analyze Supreme Court Decision No. 98 PK/Pdt.Sus/2010, regarding the declaration of bankruptcy against the PT

## 2. Research Methods

This study is a normative legal study of a descriptive-analytical nature. The research approach employs the statutory approach, the case approach, and the conceptual approach. Secondary data was collected through library research using documentary study as the data collection method. After the data was collected, it was analyzed qualitatively, and conclusions were drawn deductively.

## 3. Discussion

### 3.1. Liability of Directors Who Commit Unlawful Acts Resulting in the Bankruptcy of a Limited Liability Company

What distinguishes the legal consequences of a limited liability company (PT) being declared bankrupt due to

unlawful acts by the Board of Directors is the inclusion of the Directors' liability in such consequences. This is because the bankruptcy and financial losses of the PT result from errors committed by the Board of Directors while acting on behalf of the PT in bad faith and in violation of applicable laws and regulations as well as the company's articles of association. Consequently, the legal consequences regarding assets designated as bankruptcy assets do not apply solely to the company's assets but may also extend to the assets of the Board of Directors, who are the primary cause of the company's inability to pay its debts to creditors, ultimately leading to bankruptcy. Therefore, the legal liability of the Board of Directors for unlawful acts (PMH) resulting in the company's bankruptcy warrants further examination.

With regard to the liability of the Board of Directors for unlawful acts resulting in the bankruptcy of a company, this can be examined through the principle of balance contained in Law No. 37 of 2004. A sound bankruptcy law should not only provide benefits and protection for creditors but also for debtors and their stakeholders. Law No. 37 of 2004 on Bankruptcy and PKPU has adopted the principle of balance by referring to it as the principle of "fairness." This balanced protection of interests is in line with the foundation of the Republic of Indonesia, namely Pancasila. Pancasila recognizes not only the interests of the individual but also the interests of the many or society (Aprita, 2017) <sup>[2]</sup>.

This principle of balance, as it relates to the bankruptcy of a limited liability company (PT), means that the PT, as a debtor, cannot simply be held entirely responsible for debts that cannot be repaid to creditors, even though the protects the interests of creditors whose debts have not been repaid by the debtor (the corporation); however, under this principle of balance, the interests of the corporation as a debtor must also be protected, meaning that parties who share responsibility for the corporation's inability to pay its debts to creditors must be held accountable. The parties referred to here include the Board of Directors, who are the primary cause; therefore, it is only appropriate for the trustee to include the assets of the Board of Directors to assist the PT in repaying its debts to the creditors.

As the Company's management, the Board of Directors is required to bear full responsibility for the management of the Company in the Company's best interests and for its purposes, both in and out of court. In good faith and with a sense of responsibility, the Board of Directors must perform its duties in the best interests of the Company and its business. Members of the Board of Directors may be sued personally in court if the Company suffers losses caused by their errors or negligence. Similarly, in the event of bankruptcy resulting from the Board of Directors' errors or negligence, and if the Company's assets are insufficient to cover the losses resulting from such bankruptcy, each member of the Board of Directors is jointly and severally liable for those losses (Rastuti, 2015) <sup>[13]</sup>.

The principles of good corporate governance, which have been incorporated into the provisions of Law No. 40 of 2007 on Limited Liability Companies, must still be elaborated in detail and implemented with full responsibility. The provisions in the law merely outline the Board of Directors' general responsibilities based on the fiduciary relationship between the Board and the Corporation. When examined more closely, this fiduciary relationship encompasses three key factors: the principle of acting with due care and skill (duty of skill and care); the principle of acting in good faith

solely for the benefit and in the best interests of the company (duty of loyalty); and the principle of not taking advantage of an opportunity that actually belongs to or is intended for the Company (no secret profit rule, doctrine of corporate opportunity) (Rastuti, 2015) <sup>[13]</sup>.

It is difficult to establish a detailed framework for determining when and how the Board of Directors is deemed to have violated these principles solely by referring to the law. With regard to these principles, the Board of Directors may rely on the concept known as the business judgment rule, which provides protection for the Board against allegations of violations of the three principles mentioned above.

By applying the business judgment rule, the Board of Directors may be exempted from personal liability even if its actions result in losses to the Company—whether due to miscalculation or circumstances beyond its control that led to the failure of such actions—provided that the actions taken were business decisions made in good faith solely for the benefit of the Company. In making business decisions, a director is considered to be acting in good faith if, while not being a party directly involved in the matter requiring the business decision, they carefully consider the relevant information and are reasonably convinced that the business decision is the best one for the Company (Rastuti, 2015) <sup>[13]</sup>.

The Limited Liability Companies Act contains provisions stipulating that members of the Board of Directors are jointly and severally liable for losses incurred by the company; however, if no fault is proven, they will not be held liable for such losses. If the bankruptcy is indeed caused by the Board of Directors' negligence, the Board will lose the authority to manage the company's assets, which will then be subject to general seizure. The primary duty of the Trustee is to liquidate and administer the bankrupt estate from the issuance of the bankruptcy ruling against the bankrupt debtor.

Bankruptcy, which constitutes a general attachment of all the assets of the bankrupt debtor, is administered and settled by a Trustee under the supervision of a Supervising Judge, as provided for in Article 1(1) of the Bankruptcy Law, has established that the Board of Directors—as the primary administrators appointed by the General Meeting of Shareholders in a corporation—is liable if the corporation becomes bankrupt only if it is proven that the Board of Directors caused the bankruptcy of the corporation; in such a case, personal liability applies. Although the Trustee's objective is to secure all the assets of the bankrupt debtor, this does not mean the Trustee has the authority to perform legal acts outside the provisions of laws and regulations. The Trustee's primary duty remains solely to manage and/or liquidate the bankrupt estate (Kartika, 2021) <sup>[7]</sup>.

As mentioned above, if the Board of Directors commits a mistake or acts negligently while performing its duties, the Board may be held liable for losses incurred by the company. This is the basis for the legal consequences regarding the Directors' assets, which may be included as bankruptcy assets to help settle the company's debts to its creditors. One action by the Board of Directors that can be categorized as an error or negligence that violates the principle of good faith and also breaches the articles of association is when the Board of Directors commits an unlawful act. The consequence of an unlawful act is the incurrance of losses. Losses resulting from an unlawful act must be compensated by the person whose fault caused the loss or by the perpetrator of the unlawful act. Thus, Article 1365 of the Civil Code governs the obligation of the perpetrator of an unlawful act to

compensate for the resulting losses on one hand, and the right of the aggrieved party to claim compensation for such losses on the other (Simanjuntak, 2009)<sup>[15]</sup>. Based on the provisions contained in Article 1365 of the Civil Code, it is only appropriate that the party committing the unlawful act—including, in this case, the Board of Directors that has caused harm to another legal entity (PT)—be obligated to compensate for the damages.

In accordance with Article 1365 of the Civil Code cited above, if a director commits a wrongful act or acts with negligence in performing his or her duties as a director, and such conduct violates applicable laws or the company's articles of association, the director in question may be deemed to have committed a tortious act that causes harm to the company or the limited liability company of which he or she is a director. Therefore, in accordance with the principles contained in Article 1365 of the Civil Code, the Director must be held liable for all losses resulting from his or her actions, especially if such actions lead to the Limited Liability Company becoming bankrupt.

On the one hand, the law has granted the Board of Directors the authority to manage the company; on the other hand, however, the law also imposes responsibility on the Board of Directors for the authority granted by the law, as outlined in Article 97, paragraph (3) of the Limited Liability Companies Act, each member of the Board of Directors is personally and fully liable for the company's losses if they are at fault or negligent in performing their duties (Prasetya, 2022)<sup>[11]</sup>.

On that basis, to impose legal consequences on the Board of Directors—specifically involving the Directors' assets as a result of the company's bankruptcy status—due to unlawful acts committed by the Board of Directors implies that the Board of Directors has acted in violation of laws and regulations or the company's articles of association. In other words, the Board of Directors has been at fault or negligent in performing its duties in good faith and with full responsibility; which constitutes an unlawful act committed by the Board of Directors. The full scope of the Board of Directors' legal liability, in the form of compensation to the Company for the unlawful acts they have committed, is set forth in the provisions of Article 97, paragraphs (1), (2), (3), and (4), which state as follows:

1. The Board of Directors is responsible for the management of the Company as referred to in Article 92(1).
2. The management duties referred to in paragraph (1) must be performed by each member of the Board of Directors in good faith and with full responsibility.
3. Each member of the Board of Directors is personally and fully liable for any losses incurred by the Company if such member is at fault or negligent in performing his or her duties in accordance with the provisions referred to in paragraph (2).
4. In the event that the Board of Directors consists of 2 (two) or more members, the liability referred to in paragraph (3) applies jointly and severally to each member of the Board of Directors

As provided in Article 97(3) of the Limited Liability Company Law cited above, it should be noted that the Board of Directors bears full personal liability for the Company's losses if they are found to be at fault or negligent in performing their duties. Such negligence and fault may take various forms, provided they fall within the category of

actions taken by the Board of Directors in bad faith and without due diligence, including committing unlawful acts that harm the Company, ultimately resulting in the Company suffering losses, being unable to pay its debts to creditors, and eventually becoming bankrupt.

The Board of Directors has the authority to conduct management as deemed appropriate, within the limits set forth in Law No. 40 of 2007 on Limited Liability Companies and/or the Company's Articles of Association. The Board of Directors, consisting of two or more members, is jointly and severally liable for the actions of each member. Shareholders representing at least 1/10 of the total number of voting shares acting for and on behalf of the Company may file a lawsuit in district court against a member of the Board of Directors whose fault or negligence has caused loss to the Company (Rastuti, 2015)<sup>[13]</sup>.

In performing their duties, the Board of Directors must always act in good faith, exercise due diligence in accordance with their expertise, prioritize the interests of the company—not merely those of the shareholders—and refrain from any actions that could result in a conflict of interest between the company and the Board of Directors. In the event of a violation or deviation from their duties and obligations, the legal consequences thereof will result in the directors' liability, extending to their personal assets, for the losses incurred by each interested party—a concept known in corporate law as “piercing the corporate veil” (Asikin & Suhartana, 2016)<sup>[3]</sup>.

The principle of piercing the corporate veil with respect to the Board of Directors holds that the Board is granted authority and trust by the company through the resolutions of its meetings to manage the company in accordance with the purposes for which the corporation was established. This includes the trust granted to improve and develop the corporation, not to the contrary—that is, to the detriment of the corporation. Therefore, the doctrine of piercing the corporate veil examines the Board of Directors' responsibilities in managing and operating the corporation, as well as their duty to act in the corporation's best interests and in accordance with applicable regulations, the corporation's objectives, and its purposes. Consequently, any actions by the Board of Directors that conflict with the corporation's objectives—and which may even harm the corporation, such as unlawful acts—will be assessed for the validity of their execution. If proven, based on the unlawful act in question—specifically Article 1365 of the Civil Code and in accordance with Article 97(3) and (4) of Law No. 40 of 2007—the Board of Directors is obligated to compensate for the losses incurred by PT.

Furthermore, regarding the bankruptcy of a limited liability company (PT) caused by unlawful acts of the Board of Directors, to determine the legal consequences for the Directors' assets, such assets may be included as part of the bankruptcy estate as outlined in the provisions of Article 104, paragraphs (1), (2), and (3) of Law No. 40 of 2007 on Limited Liability Companies, which are fully outlined as follows:

1. The Board of Directors is not authorized to file a petition for bankruptcy on behalf of the Company with the Commercial Court without first obtaining approval from the General Meeting of Shareholders, without prejudice to the provisions set forth in the law on Bankruptcy and Suspension of Debt Payments.
2. In the event that the bankruptcy referred to in the preceding paragraph occurs due to the fault or negligence

of the Board of Directors and the bankruptcy estate is insufficient to pay all of the Company's obligations in such bankruptcy, each member of the Board of Directors shall be jointly and severally liable for all unpaid obligations from said bankruptcy estate.

3. The liability referred to in paragraph (2) shall also apply to members of the Board of Directors who were at fault or negligent and who served as members of the Board of Directors within a period of 5 (five) years prior to the issuance of the bankruptcy declaration.

The legal principle, specifically Article 104 (2) of the Limited Liability Company Law cited above, states that in the event of bankruptcy resulting from the fault or negligence of the Board of Directors, and where the bankruptcy estate is insufficient to pay all of the Company's liabilities in bankruptcy, each member of the Board of Directors is jointly and severally liable for all unpaid liabilities from said bankruptcy estate. This means that if it is proven that unlawful acts committed by the Board of Directors caused the bankruptcy of the PT, and when the PT has been declared bankrupt but the assets of the PT's bankruptcy estate are insufficient to settle the as a debtor to its creditors, the personal assets of the Board of Directors may be included by the Trustee as part of the bankruptcy estate intended for payment to the PT's creditors.

This is also consistent with the provisions contained in the explanatory notes to Article 3(1) of Law No. 37 of 2004 on the KPKPU, which state: "The term 'other matters' refers, among other things, to *actio pauliana*, third-party objections to seizure, or cases in which the Debtor, Creditor, the Trustee, or an administrator is a party to a case concerning the bankrupt estate, including a lawsuit by the Trustee against the Board of Directors that resulted in the company being declared bankrupt due to their negligence or fault (unlawful acts)."

The liability of the Board of Directors as set forth in the articles of association also applies in the event of bankruptcy; this is evident in Article 104(2) of the Limited Liability Companies Act, which states that members of the Board of Directors are jointly and severally liable if the bankruptcy estate used to settle all liabilities for debt payments is insufficient. Thus, if a member of the Board of Directors is negligent or violates their duty to manage in good faith and with full responsibility in accordance with the scope of the aspects of good faith and managerial responsibility mentioned above, then the members of the Board of Directors are jointly and severally liable for the losses incurred by the Company (Kartika, 2021)<sup>[7]</sup>.

Based on the relationship between the Corporation and the Board of Directors, if the Board of Directors, in the performance of its duties, acts in bad faith and breaches the Corporation's trust, then the Board of Directors should be held legally liable for its wrongful acts (in this case, unlawful acts). Thus, essentially based on Article 97(2) and (3) in conjunction with Article 104(2) of the Limited Liability Company Law, as linked to the legal principles set forth in Article 1365 of the Civil Code, the Board of Directors is legally liable to compensate the Company for the losses incurred, and the Directors' assets may be included in the bankruptcy estate, meaning that if the Board of Directors is proven to have committed errors and negligence (unlawful

acts) while performing their duties, the trustee is entitled to seize the Board's assets to settle the Company's debts to its creditors. Since this bankruptcy was caused by the Board of Directors' unlawful acts, the Board is obligated to contribute to compensating the creditors for their losses.

In essence, the Board of Directors may also be exempted from legal liability for losses incurred by the PT or for the PT's bankruptcy during the term of that Board of Directors. The inability to hold the Board of Directors legally liable is evident from the provisions of Article 97(5) in conjunction with Article 104(4) of the Limited Liability Companies Act, which state as follows:

1. The bankruptcy or loss was not due to his or her fault or negligence;
2. Has managed the Company in good faith, with due care, and with full responsibility for the Company's interests and in accordance with the Company's objectives and purposes;
3. Has no conflict of interest, either direct or indirect, regarding the management actions taken;
4. Has taken measures to prevent the occurrence or continuation of such loss;
5. Has taken measures to prevent bankruptcy.

Conversely, if the Board of Directors cannot prove that the Company's losses and bankruptcy were not due to its negligence or fault, then the Board of Directors is legally liable. Based on the theory of legal liability as it relates to this discussion, this provides a basis for parties involved and with an interest in the bankruptcy of the Limited Liability Company to seek compensation from the party responsible for causing such losses. Through the theory of legal liability, it provides legality and a legal basis for stakeholders to take actions permitted by legal norms regarding the bankruptcy issues faced by the Limited Liability Company. This is especially true when the bankruptcy is caused by unlawful acts committed by the company's own Board of Directors. Thus, based on the theory of legal liability, it is determined which parties should be held legally responsible for the court's declaration of bankruptcy of a limited liability company.

The imposition of legal liability on the assets of the Board of Directors, as described above, is consistent with the application of the legal entity theory and the theory of legal liability in force in Indonesia. This is because a limited liability company is a legal entity, and as such, its rights must be protected from the actions of parties causing harm; in other words, parties causing harm to the limited liability company must be held liable. Consequently, the assets of the party causing harm to the Limited Liability Company may be seized, provided it is proven that said party (in this case, the Board of Directors) was the primary cause of the Company's losses, leading to its inability to repay its debts to creditors and resulting in a declaration of bankruptcy.

It is reiterated that if the results of the investigation prove that the losses incurred by the corporation as a debtor—resulting in its inability to pay its debts to creditors—were caused by the negligence of the corporation's board of directors, then, in the interest of justice, the trustee may include the Directors' assets to pay the PT's debts to the creditors or sue the Directors as the cause of the PT's bankruptcy due to their negligence or fault. This is explained in Article 3(1) of Law

No. 37 of 2004 on Bankruptcy and PKPU in conjunction with Article 104(2) of Law No. 40 of 2007 on Limited Liability Companies, therefore, the principle of justice in the bankruptcy of a limited liability company resulting from the directors' negligence is indeed essential and consistent with legal protection for all interested parties.

### **3.2. Analysis of the Legal Rationale Behind the Judge's Decision to Grant Bankruptcy Status to a Limited Liability Company in Supreme Court Decision No. 98PK/Pdt.Sus/2010**

The Supreme Court, as the highest body exercising judicial power, has ruled that judicial decisions must take into account all legal, philosophical, and sociological, so that the justice sought, realized, and accounted for in judicial decisions is justice oriented toward legal justice, moral justice, and social justice.

The legal aspect is the first and foremost consideration, guided by applicable laws. As the enforcer of the law, the judge must understand the law by identifying the statutes relevant to the case at hand. Judges must assess whether the law is fair, serves a useful purpose, or provides legal certainty if enforced, because one of the fundamental objectives of the law is to create justice.

Regarding the philosophical aspect, it centers on truth and justice, while the sociological aspect takes into account the cultural values that exist within society. The application of these philosophical and sociological aspects requires extensive experience and knowledge, as well as the wisdom to address the values within society that have been overlooked. Clearly, their application is very difficult because they do not follow the principle of legality and are not bound by the legal system. The inclusion of these three elements is intended to ensure that the decision is considered fair and accepted by society (Rifai, 2011)<sup>[14]</sup>.

Based on the above discussion, it is only appropriate that a judge, before rendering a decision, should take into account the aspects mentioned above, particularly when formulating the legal considerations in a decision. Of course, this also applies to the legal considerations in Supreme Court Decision No. 98 PK/Pdt.Sus/2010. Previously, the facts of the case regarding this bankruptcy matter were outlined, as well as the decisions starting from the Decision of the Central Jakarta Commercial Court No. 20/Pailit/2009/PN.Niaga. Jkt.Pst, followed by Supreme Court Cassation Decision No. 564 K/Pdt.Sus/2009, and concluded by Supreme Court Review Decision No. 98 PK/Pdt.Sus/2010, which has become final and binding.

After reviewing the legal considerations of the Panel of Judges in Supreme Court Review Decision No. 98 PK/Pdt.Sus/2010, the bankruptcy court was essentially correct in declaring PT. Rasico Industry bankrupt. However, although the ruling was essentially correct, there were errors in the judges' legal reasoning or a lack of consideration of legal norms, resulting in a failure to explain the causes of the company's bankruptcy.

As previously explained, if the company becomes bankrupt as a result of unlawful acts committed by the Board of Directors, the Directors' assets may be included to assist in the repayment of the bankrupt company's debts to its creditors. The inclusion of the Directors' assets, as previously outlined, is based on Article 97(1) and (2), Article 104(2) of the Limited Liability Company Law, and Article 1365 of the Civil Code. In other words, in the event of the company's

bankruptcy, the Board of Directors cannot evade liability, especially if the losses result from unlawful acts committed by them. However, before the Directors' assets are included as part of the bankruptcy estate to cover their liability for settling the unpaid debts from the company's bankruptcy estate, it is necessary to first ensure that the elements of the unlawful act itself are satisfied.

It is important to understand the provision in Article 104(2) of the Limited Liability Companies Act, which allows for holding the Board of Directors personally liable for the bankruptcy of a limited liability company (PT), as the company is often used as a tool to shield those who should bear broader liability—and to whom such liability should be attributed—from the losses they have caused. The company is often used as a shield by Directors acting in bad faith, where, due to this limited liability, the Directors' personal assets appear to be untouchable (Purbandari, 2014)<sup>[12]</sup>.

The liability of the Board of Directors is also set forth in the articles of association, including in the event of bankruptcy. This is evident in Article 104(2) of the Limited Liability Companies Act, as outlined above, which essentially states that members of the Board of Directors are jointly and severally liable if the bankruptcy estate used to settle all liabilities for debt payments is insufficient. Thus, if a member of the Board of Directors is negligent or violates their duty to manage in good faith and with full responsibility in accordance with the scope of the aspects of good faith and managerial responsibility mentioned above, then the members of the Board of Directors are jointly and severally liable for the losses incurred by the Company (Kartika, 2021)<sup>[7]</sup>.

The imposition of liability for damages on the personal assets of the Board of Directors and the seizure of such assets as part of the bankruptcy estate are justified because the losses resulted from unlawful acts committed by the Board of Directors. Consequently, since the losses stem from the Board's unlawful acts, the Board bears joint liability for such damages. This form of the Directors' shared liability is intended to settle the debts of PT as the debtor. Once the elements of the Directors' unlawful acts, as described above, have been established, it is appropriate for the Panel of Judges hearing the case in Supreme Court Decision No. 98 PK/Pdt.Sus/2010 not only to declare PT. Rasico Industry but also to designate the Directors' assets as part of the bankruptcy estate for the settlement of the company's debts. Based on the facts of the case as previously outlined, it has been established that the Board of Directors of PT Rasico Industry has committed unlawful acts against both the General Meeting of Shareholders and the company itself. Consequently, the company and its shareholders suffered losses, ultimately rendering the company unable to pay its debts to creditors; therefore, the creditors filed for bankruptcy against PT Rasico Industry. The unlawful acts committed by the Board of Directors against the General Meeting of Shareholders and the company are as follows:

1. The Board of Directors has not submitted the annual report to;
2. The Board of Directors has not submitted the Company's financial statements to a public accountant and has not presented them to the General Meeting of Shareholders;
3. The Board of Directors has not paid dividends/profits to the General Meeting of Shareholders;
4. The Board of Directors has not convened the annual General Meeting of Shareholders

The actions of the Board of Directors as mentioned above also constitute sufficient grounds to conclude that the Board of Directors has committed unlawful acts that have caused harm to PT. Rasico Industry and its shareholders, as provided for in Article 1365 of the Civil Code. Therefore, based on the legal principles of the Limited Liability Companies Act, the Board of Directors' failure to fulfill its duties in managing the company can be categorized as constituting fault and negligence, as well as bad faith on the part of the Board of Directors in managing the company, thereby fulfilling the elements required to seek legal liability from the Board of Directors pursuant to Article 97(3) in conjunction with Article 104(2) of No. 40 of 2007.

As a general rule, once unlawful acts committed by the Board of Directors have been proven, it is appropriate for the Court to hold the Directors' assets jointly and severally liable for the payment of debts to creditors. However, the Court must first establish that the Board of Directors has committed unlawful acts in accordance with Article 1365 of the Civil Code.

The liability of the Board of Directors' personal assets for compensation or their inclusion as bankruptcy assets to settle the company's debts is also provided for under the Bankruptcy Law. This is in accordance with the explanation of Article 3 paragraph (1) of the Bankruptcy Law, which also states that the Board of Directors may be sued if the company is declared bankrupt due to the Board's negligence or fault. Therefore, the judge in Supreme Court Decision No. 98 PK/Pdt.Sus/2010 should not only consider the validity of the company's declaration of bankruptcy but must also more carefully assess the causes of the company's bankruptcy, including evaluating the negligence and errors committed by the Board of Directors regarding the company.

Based on the above discussion and from the perspective of corporate law theory, there is a clear error in the Supreme Court's Review Decision No. 98 PK/Pdt.Sus/2010 regarding the imposition of legal liability on the Board of Directors, which was proven to have caused financial loss to PT. Rasico Industry, ultimately leading to the company's bankruptcy. Since the Board of Directors is the primary body responsible for managing the company, it should have acted in good faith in carrying out its duties.

Based on the theory of legal liability, it is possible to determine the extent of the authority granted by law to the Board of Directors to manage and administer a limited liability company (PT). Furthermore, the theory of legal liability examines the matter from the perspective of the obligations and authority of individuals—in this case, the Board of Directors—in accordance with the provisions of the applicable laws, thereby clarifying the scope of the Board's authority in managing the company. Ultimately, the Board of Directors' legal liability can be determined in the event of losses or even bankruptcy of the PT under its management. For this reason, the PT, as a legal entity, is not immune to the actions of other legal entities that may harm the PT. This includes the actions of the Board of Directors, whose negligence or errors result in losses and the bankruptcy of the PT.

A judge or judges possess significant authority over the parties (litigants) regarding the issues or conflicts brought before them. However, this also means that judges, in carrying out their duties, bear a heavy responsibility and must be fully aware of it, as a judge's decision can have far-reaching consequences on the lives of the litigants and/or

others affected by the scope of that decision. An unjust judicial decision can even result in physical and emotional suffering that may leave a lasting mark on the psyche of the litigants concerned throughout their lives. Therefore, although Supreme Court Review Decision No. 98 PK/Pdt.Sus/2010 was correct regarding the declaration of bankruptcy, it was erroneous in failing to consider the Board of Directors' liability as the primary cause of the state-owned enterprise's losses.

#### 4. Conclusion

The discussion above shows that the liability of directors who commit unlawful acts leading to the bankruptcy of a company can be categorized into two forms. First, full personal liability or joint and several liability for the company's losses in accordance with applicable legal provisions. Second, the inclusion of the directors' assets as part of the bankruptcy estate, particularly when the bankruptcy estate is insufficient to pay the company's obligations. There is an error in the legal reasoning of Supreme Court Decision No. 98 PK/Pdt.Sus/2010 regarding the failure to include the primary cause of the bankruptcy of PT Rasico Industry. This study's recommendations emphasize the need for specific regulations governing the Directors' liability in cases of unlawful acts leading to the bankruptcy of a company. These regulations must be more specific and explicit regarding the causes of bankruptcy, and judges must thoroughly consider the Directors' role in the occurrence of bankruptcy. A progressive legal approach can help identify the true causes of bankruptcy and enable the Directors' liability to be determined more accurately, including regarding the payment of compensation to the Company and the use of the Directors' personal assets to settle the Company's debts.

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