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NORMATIVE REVIEW OF THE DISSOLUTION OF LIMITED COMPANIES PROPOSED BY SHAREHOLDERS

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Abstract

This study explains the legal framework governing the dissolution of Limited Liability Companies in Indonesia based on the Limited Liability Company Law (UUPT), with an emphasis on proposals encouraged by the General Meeting of Shareholders (GMS). Acknowledging the multifaceted nature of dissolution, this research emphasizes its far-reaching impact on employees, creditors, and society at large. The normative juridical approach is a methodological framework based on primary legal sources, which includes a comprehensive review of theories, concepts, legal principles and statutory regulations related to the subject matter under study. The legal consequence for a Limited Liability Company (PT) that does not undergo a liquidation process is that the company's continued existence remains, so that it is subject to ongoing legal obligations and administrative requirements which can result in sanctions and fines, while the inability to terminate legal entity status can complicate taxation issues. , licensing, and corporate governance.

Keywords: UUPS; RUPS; Perseroan Limited (PT).

Abstrak

Penelitian ini memaparkan kerangka hukum yang mengatur pembubaran Perseroan Terbatas di Indonesia berdasarkan Undang-Undang Perseroan Terbatas (UUPT), dengan penekanan pada usulan yang diajukan oleh Rapat Umum Pemegang Saham (RUPS). Dengan menyadari sifat pembubaran yang multifaset, penelitian ini menekankan dampaknya yang luas terhadap karyawan, kreditor, dan masyarakat luas. Pendekatan yuridis normatif merupakan kerangka metodologis yang didasarkan pada sumber hukum primer, yang mencakup telaah komprehensif terhadap teori, konsep, asas hukum, dan peraturan perundang-undangan yang terkait dengan pokok bahasan yang diteliti. Akibat hukum bagi Perseroan Terbatas (PT) yang tidak mengalami proses likuidasi adalah kelangsungan hidup perusahaan tersebut, sehingga tunduk pada kewajiban hukum dan persyaratan administratif yang berkelanjutan yang dapat mengakibatkan sanksi dan denda, sedangkan ketidakmampuan untuk mengakhiri status badan hukum dapat mempersulit masalah perpajakan, perizinan, dan tata kelola perusahaan.

Kata Kunci: UPS; RUPS; Perseroan Terbatas (PT)

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INTRODUCTION

In the dynamic corporate governance landscape in Indonesia, a Limited Liability Company (PT) or Limited Liability Company (LLC) is an important aspect that requires careful examination. This normative review seeks to navigate the complex terrain surrounding the dissolution of a Limited Liability Company (PT) or Limited Liability Company (LLC) in Indonesia, with particular emphasis on cases where the dissolution proposal originates from the shareholders themselves. As Indonesia develops as an economic power in Southeast Asia, the mechanisms governing business dissolution require comprehensive assessment to ensure they remain adaptive and responsive to the various challenges faced by companies and their stakeholders.[1]

The dissolution of a Limited Liability Company (PT) or Limited Liability Company (LLC) is a common topic of discussion among shareholders for various reasons, such as financial difficulties, changes in business strategy, or disputes between partners. In many cases, the decision to dissolve a Limited Liability Company (PT) or Limited Liability Company (LLC) is proposed by the shareholders themselves. The establishment and operation of Limited Liability Companies (PT) or Limited Liability Companies (LLC) in Indonesia has experienced a significant surge, this underscores the need for a deeper understanding of their dissolution process. This review aims to explain the legal framework that currently regulates the dissolution of Limited Liability Companies (LLC) in the Indonesian context, with a focus on shareholder-driven proposals. The motivations behind such proposals can range from financial exigencies and internal disputes to strategic reassessments, so it is important to review the existing regulatory framework to ensure alignment with contemporary business dynamics.[2]

When we delve into the intricacies of shareholder-initiated dissolutions, the multifaceted nature of this process becomes clear. The implications go beyond the immediate interests of shareholders, but also impact employees, creditors and the wider community. Therefore, a normative review becomes not only prudent but also necessary to evaluate existing legal provisions, identifying areas of strength and potential for improvement to create a dissolution framework that is not only legally sound but also ethically and economically sound. This study aims to contribute to the ongoing dialogue around corporate governance in Indonesia, providing insights that have the potential to shape the future direction of Limited Liability Company (LLC) dissolution regulations in the country. The decision to dissolve a Limited Liability Company (PT) has significant practical implications for shareholders and the company itself. It is important for shareholders to carefully consider the financial and legal consequences of dissolving a company, as this involves winding up the company's affairs and distributing its assets, which could result in tax implications and legal disputes. Apart from that, this

[1]Triatama, BY, Al Fiter, Moch. HR, & Sumriyah, S, "Legal Protection of Shareholders in the Liquidation Process of Limited Liability Companies (Case Study: Central Jakarta District Court Decision Number: 76/Pdt.P/2021/Pn Jkt.Pst)", Social Sciences Research Journal, Politics and Humanities (JURRISH), Vol. 2 No.2 2023, p. 158–178.

[2]Ibaidah Ayogi, D., Raya Telang, J., Telang Inda, P., Kamal, K., Bangkalan, K., Timur, J., & author, K. "Legal Protection of Shareholder Rights in the Dissolution of a Company Based on Law Law Number 40 of 2007". Journal of Law and Social Politics, Vol. 1 No.3 2023S, pp.111–124.

dissolution decision can also have a big impact on employees who may lose their jobs, and creditors who may have difficulty collecting their debts.[3]

The process for dissolving a PT is regulated by the laws and regulations of the state where the company is registered. Generally, a PT can be dissolved in two ways: voluntary dissolution, initiated by shareholders, or forced dissolution, initiated by court order. In the event of a dissolution proposed by shareholders, the process begins with a shareholder decision, which must be approved by a majority or supermajority vote, as stated in the PT's operating agreement. The legal framework for shareholder proposed dissolution varies by state. For example, some states require a specific reason, such as a shareholder impasse, to dissolve a PT, while other states allow dissolution for any reason. Additionally, states may have different procedures and requirements for the dissolution process, including notification to creditors and distribution of assets. The legal basis for the dissolution of a PT in Indonesia is regulated in Law Number 40 of 2007 concerning Limited Liability Companies ("UUPT"). Based on Article 142 of the Company Law, dissolution can be proposed by shareholders through a decision from the General Meeting of Shareholders (GMS). This decision must be approved by at least three-quarters of the total shares with voting rights present at the GMS. The Company Law also requires that a proposal for dissolution must be accompanied by a written explanation of the reasons for the dissolution, as well as a proposed liquidation plan. The proposal must also be published in at least one national newspaper and published in the State Gazette.[4]

The dissolution of a PT in Indonesia proposed by shareholders can face various challenges, both from a legal and practical perspective. One of the main challenges is ensuring that the dissolution process follows the correct procedures and complies with relevant laws and regulations. Failure to comply with these procedures may result in legal disputes and delays in the dissolution process. Furthermore, the proposed dissolution could have a significant impact on both shareholders and the company. Shareholders may face financial losses due to the liquidation of the company, and the value of their shares may be affected. On the other hand, the company must also bear liquidation costs and also face legal consequences if the dissolution is not carried out according to established procedures. To ensure a smooth and lawful dissolution process, shareholders proposing the dissolution of a PT in Indonesia should seek legal advice from a reputable law firm. This will help avoid potential legal disputes and ensure that the dissolution follows the correct procedures. In addition, shareholders must also consider the impact of the proposed dissolution on themselves and the company. Alternative solutions, such as restructuring or merger, should be explored before taking a final decision to dissolve the Company.[5]

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[3]Kurniawan, TA "Legal Protection of Shareholder Rights in Company Dissolution Based on Law Number 40 of 2007 concerning Limited Liability Companies (Case Study of Supreme Court Decision Number 1618 K/PDT/2016)", KERTHA WICAKSANA, Vol. 16 No. 1, 2022, p. 69-97

[4]Ramadhanu, MA, Rosalina, M., & Lubis, MFR "Judicial Analysis of Unlawful Acts Due to Revocation of a Limited Liability Company License Without Going through a General Meeting of Shareholders (Study of Supreme Court Decision Number 3569 K/Pdt/2019)". Al-Hikmah Journal of Law and Society, Vol. 3 No.1, 2023, p. 1–23.

[5]Paramadani, SP "Legal Review of the Dissolution of Limited Liability Companies Based on the Decisions of the General Meeting of Shareholders (GMS) in Accordance with Indonesian and Malaysian Legal Rules." AL-MANHAJ: Journal of Islamic Law and Social Institutions, Vol.5 No.1,2023, p. 1025–1034.

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With the background described above, the author would like to discuss what things must be considered when making a standard agreement and how the principle of freedom of contract can be implemented in a standard agreement so that justice can be achieved for the parties to the agreement.

METHOD

The normative juridical approach is a methodological framework based on primary legal sources, which includes a comprehensive review of theories, concepts, legal principles and statutory regulations related to the subject matter under study. Usually called a bibliographic approach, this methodology includes an in-depth study of legal literature, including books, statutory regulations and other relevant documents related to the research topic. In contrast, an empirical juridical approach requires observational analysis of practical realities that exist in the operational realm. Often referred to as a sociological approach, this methodology involves direct fieldwork to observe and analyze real-world phenomena. The research carried out in this study adheres to the empirical juridical research paradigm, namely direct field research to find out real challenges which are then correlated with applicable laws and regulations, as well as established legal theories.[6]

RESULT AND DISCUSSION

1. *Positions of Directors and Shareholders in Non-Operating Limited Liability Companies (PT)*

Limited Liability Companies (hereinafter referred to as PT) are established by at least two legal subjects, either individuals or legal entities, whose establishment is carried out before an authorized official, namely a Notary. Article 1 number 1 of Law on the Position of Notaries Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Position of Notaries (hereinafter referred to as UUJN), states that a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in UUJN. In the realm of non-operating limited liability companies (PT), the role and position of directors and shareholders play an important role in shaping the governance and decision-making process. The foundation of their responsibilities and rights is firmly embedded in the legal framework, Article 146 paragraph 1 letter c, especially regarding the Limited Liability Company Law, discussing companies that have been inactive or not carrying on business for years, as evidenced by a notification letter submitted by the tax authority. .[7]

The Board of Directors is a company organ that is given equitable authority. The Board of Directors is an organ that carries out the function of managing the company and is responsible for the interests and objectives of the company. The responsibility for carrying out the company's activities lies with the Board of Directors and not with the shareholders as owners of the company. This responsibility arises if the Board of Directors who have the authority and accept the obligation to carry out the management of the company begin to use their authority. The duties and obligations of the Board of Directors have been regulated and contained in the Company Law and other implementing regulations.

[6]Pelita Harapan Surabaya, "LIMITED COMPANY RESPONSIBILITIES IN LIQUIDATION" Journal of Notarial Law, Unpad Faculty of Law, Vol.4 No.2, 2021.

[7]Shelly Sonyatan, "Dissolution of Limited Liability Companies Based on Decisions of the General Meeting of Shareholders (GMS) in Indonesia and Australia", In Journal of Judicial Review: Vol. XVI (Issue 2).

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Apart from that, Article 98 Paragraph 1 of the Company Law states that the Board of Directors has the authority to represent the company both inside and outside the court. Apart from the Company's Directors having obligations as regulated in the Company Law, the Directors also have other obligations which are indicated to:

a. Obligations to the Company: Directors are obliged to place the company's interests as the highest interests, higher than personal interests or the interests of the form of business they own. All actions they take must be believed to be carried out on behalf of the company.
b. Obligations to shareholders The Board of Directors is obliged to provide shareholders with sufficient information regarding the running of the company. If there is a violation of shareholder rights, the Directors can be held personally responsible.
c. Obligations to stakeholders, stakeholders are third parties who can be investors. A healthy company will better guarantee the protection of the interests of third parties.[8]

Article 97 paragraph (2) of the Limited Liability Company Law regulates the procedural aspects of appointing and dismissing directors in non-operating limited liability companies (PT). According to this provision, if the articles of association do not have special provisions, then the appointment and dismissal of directors must be based on the decision of the General Meeting of Shareholders. This paragraph underlines the importance of shareholder involvement in making important company decisions, especially regarding the composition of the board of directors. By granting this authority to the General Meeting of Shareholders, the law promotes transparency and democratic principles within non-operating companies, thereby ensuring that shareholders have a say in shaping the leadership of the organization. Furthermore, this emphasizes the need for clear and strong corporate governance mechanisms to facilitate the smooth transition of director positions and maintain the stability of the company's leadership structure. Directors, as company administrators, bear the responsibility to direct the organization towards its goals. Their decisions impact the company's overall direction and strategy, and they are entrusted to safeguard shareholder interests. In a non-operating limited company, the role of directors becomes very important as they have to deal with situations where the company may not be actively involved in commercial activities. Even though there are no day-to-day operations, directors remain important in overseeing company affairs, ensuring compliance with legal obligations, and maintaining transparency.[9]

In contrast, shareholders are the owners of the company, and their position gives them certain rights and privileges. In non-operating limited liability companies, shareholders may take a more hands-off approach compared to those who are actively involved in the company's operations. However, its influence remains significant, especially in making major decisions such as mergers, acquisitions or changes to the company's capital structure. The Limited Liability Company Law

[8]Lismayanti, E., Purwaningsih, E., Yusuf, C., Magister, P., Kenotariatan, S., Pascasarjana, S., & Yarsi, U. LEGALITY OF ACTIONS OF BOARD OF DIRECTORS OF LIMITED COMPANIES. 2023, p. 3.

[9]Probowat, NO, Abunawas, A., & Pranacitra, R, "JURIDICAL ANALYSIS OF LEGAL RULES FOR DISSOLUTION OF LIMITED LIABILITY COMPANIES AND BANKRUPTCY", JUSTITIA: Journal of Legal Sciences and Humanities, Vol. 9 No.6, 2022, p. 2898–2909.

provides a framework for the relationship between shareholders and directors, outlining mechanisms for decision making, distribution of profits, and resolution of disputes.[10]

The interaction between directors and shareholders in a non-operating limited liability company is a delicate balance, requiring compliance with legal guidelines and a shared commitment to the best interests of the company. This underscores the importance of a clear governance structure and effective communication channels to ensure alignment between key stakeholders. Because non-operating companies may face unique challenges, such as maintaining compliance without active commercial activity, the role of directors and shareholders becomes increasingly important in navigating the complexities of corporate governance in this context.[11]

2. *Obligations for Dissolution or Liquidation of Limited Liability Companies that will be Dissolved based on the Limited Liability Company Law (UUPT)*

Once more, Malaysia profits from a variety of businesses participating in commercial endeavors. The nation's prevalent Common Law system acknowledges several types of business entities, including: Sole Proprietorship, a firm owned by a single person where all authority and decision-making related to the firm's operations rest with the proprietor. Partnership, also referred to as a coalition, is a firm founded or owned by two or more individuals known as "partners". This kind of business entity is generally more appropriate for professional companies. Similar to Sole Proprietorship, only Malaysian nationals can register such partnerships. Limited Liability Partnership (LLP) merges characteristics of a partnership with those of a Private Limited Company. This type resembles traditional partnerships but also reaps advantages similar to a Private Limited Company. Private Limited Company/Sendirian Berhad (Sdn Bhd) is a distinct legal entity from its proprietors, allowing it to participate in contracts, transactions, tax payments, property sales, as well as legal actions autonomously. Sdn Bhd is comparable to a Limited Liability Company in Indonesia.

The legal provisions governing the dissolution of Limited Liability Companies (LLC) in Indonesia, especially those initiated by shareholders, are an important aspect of corporate governance. A comprehensive exploration of existing regulations shows a complex landscape influenced by legal frameworks such as the PT UUPT. Articles 142 and 143 of the Company Law provide a basic understanding of the dissolution process, which outlines the mechanisms for voluntary and involuntary dissolution. Article 142 paragraph 1 contains company law relating to the dissolution, liquidation and termination of the legal entity status of a company. In general, this provision outlines the process and requirements for dissolving a company, dividing its assets and officially ending its legal existence. In many jurisdictions, the dissolution process involves several steps (In Dissolution of Limited Liability Companies, 2007), such as:

a. Council Resolution. A company's board of directors may pass a resolution proposing dissolution, which often requires shareholder approval.
b. Creditor Notice. Creditors and other stakeholders may need to be notified of the intention to dissolve the company, so that they can file claims against the company's assets.

[10]Devianti, VR, Suryanti, N., & Afriana, A. "Dissolution of a Limited Liability Company Proposed by Shareholders Who Own a Balanced Percentage of Shares Through Court Determination", Journal of Civil Procedure Law (ADHAPER), Vol.8 No.1, 2022, p. 75–91.

[11]Yosephin, P. P, "Judicial Analysis of Dissolution of a Non-Operating Limited Liability Company (PT)." Recital Review, Vol. 3 No. 2,2021, pp. 314–330.

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c. Asset Liquidation. Company assets are usually liquidated, and the proceeds are used to pay off debts and liabilities. The remaining funds can be distributed to shareholders.
d. Tax Clearance. The company may need to obtain tax clearance, to ensure that all tax obligations are met before dissolution.
e. Legal Documentation. Various legal documents, including an agreement or dissolution plan, may be required to formalize the process.
f. Submission to Authorities. The company must file dissolution documents with the relevant government authorities, officially ending its legal entity status.

Therefore, the clarity, coherence and effectiveness of these regulations are highlighted when assessing their adaptability to the evolving corporate landscape. As business dynamics continue to transform, evaluating responses to these legal requirements becomes important. The regulatory framework must be aligned with contemporary needs, ensuring the protection of shareholder interests and facilitating a transparent and efficient dissolution process. In reviewing Indonesian government regulations, it is important to examine the adequacy of these regulations in balancing the various considerations inherent in shareholder-initiated dissolution scenarios, enhancing legal certainty and safeguarding the interests of broader stakeholders.

The procedural steps for dissolving a Limited Liability Company are carried out formally and precisely in accordance with the provisions of the laws and regulations. Dissolution was initially carried out through a General Meeting of Shareholders (GMS) within a specified period of 30 days, as stipulated in Article 142 of the Limited Liability Company Law (UUPT). Furthermore, the company is obliged to submit an official notification to the Ministry of Law and Human Rights of the Republic of Indonesia accompanied by an announcement to the public through mass media channels, as mandated by Article 147 of the PT UUPT. The next phase involves a careful liquidation process, including the comprehensive task of recording and disclosing the company's assets and debts to the public, formulating detailed plans for the distribution of liquidated assets, completing payments to creditors, disbursement of remaining liquidated assets to shareholders, revocation of permits. company permits and NPWP, as well as handling company taxes owed within the specified one year period. Further transparency is ensured through official announcements, through newspapers and BNRI, regarding the Company's Asset Distribution Plan based on liquidation results, in accordance with Article 149 of the Company Law, which provides a two-month grace period for creditors to submit objections. The final responsibility for the liquidation process lies in the final decision of the General Meeting of Shareholders (GMS) which results in the dismissal of the liquidator, in accordance with Article 152 of the Company Law. Consequential steps include notifying the Ministry of Law and Human Rights of the Republic of Indonesia and announcing it officially through the mass media within a certain period of nine months, as specified in Article 152 paragraph 3 of the PT UUPT. Finally, the formal revocation of Limited Liability Company Legal Entity status is expressly regulated in Article 152 paragraph 5 of the Company Law.[12]

The legal consequences for Limited Liability Companies (PT) that do not carry out the liquidation process in Indonesia are quite large and include several important things:

[12]Kiwerdiguna, IGNA, & Widhiyaastuti, IGAA D, "STATUS OF THE COMPANY'S LEGAL ENTITY AS A RESULT OF THE DISSOLUTION OF THE COMPANY". 2009.

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1) Sustainable Existence. Failure to initiate the liquidation process means the PT continues to exist as a legal entity, making it subject to ongoing legal obligations, potential liabilities and administrative requirements.
2) Default Status. Companies may be classified as being in default of legal obligations, which may result in penalties, fines, or other regulatory sanctions.
3) Inability to Terminate Legal Entity Status. Non-compliance with the liquidation process prevents the formal termination of the company's legal entity status. This can lead to complications in matters such as taxation, licensing and corporate governance.
4) Potential Director Liability. Non-compliant PT directors and officers may face legal consequences, including personal liability for the company's obligations, if they fail to take the necessary steps for liquidation as required by law.
5) Credit Rating Downgrade. A company's creditworthiness and business reputation may be adversely affected if the company does not liquidate properly, making it difficult to carry out future business activities or obtain financing.
6) Legal proceedings. Creditors and other stakeholders may initiate legal proceedings against non-compliant PTs to recover their debts, adding further legal complications and potential financial liabilities.
7) Government intervention. Regulatory authorities may intervene, taking action such as revoking permits, imposing fines, or even forcing disbandment in cases of extreme non-compliance.
8) Tensions in Business Relationships. Failure to complete the liquidation process can sour relationships with business partners, suppliers and other stakeholders who may question the company's legal standing and financial stability.
9) Impact on Shareholders. Shareholders may face challenges in realizing their investments or obtaining profits due to the company's unresolved legal status.
10) Ongoing Tax Liabilities. PTs that do not comply are still obliged to fulfill tax obligations, which has the potential to result in fines and complications related to taxation.

In summary, the consequences of Limited Liability Company law ignoring the liquidation process in Indonesia can have far-reaching implications, affecting the company's legal standing, financial stability and relationships with stakeholders. Compliance with liquidation requirements is essential to properly wind up a company's affairs and avoid potential legal liability.

If the liquidator does not carry out the liquidation process of a Limited Liability Company (PT) in Indonesia, detrimental impacts will arise. First, the company's legal entity status remains intact, giving rise to ongoing legal and financial obligations. Failure to distribute assets and pay off debts hampers the resolution of the company's financial affairs, potentially giving rise to legal action by creditors. This inaction could result in penalties, fines, or regulatory sanctions, further complicating the company's position. Non-compliance with the liquidation process can also trigger default status, lowering a company's credit rating and limiting its ability to engage in future business activities or obtain financing. Directors and officers may face personal liability for the company's obligations, and a lack of closure can disrupt relationships with stakeholders, thereby impacting the company's business reputation. Additionally, authorities can intervene, revoke permits or even order disbandment in cases of extreme non-compliance. The prolonged existence of a non-liquidated company also maintains tax obligations, thereby potentially giving rise to tax sanctions. In essence, the liquidator's failure to carry out the liquidation process creates a domino effect of legal, financial and reputational impacts, thereby

hampering the proper resolution of company affairs. As Article 148 paragraph 2 of the Company Law states that the liquidator is responsible for the losses of parties involved with the Company.

CONCLUSION

The decision to dissolve a PT is ultimately in the hands of its shareholders, it is important to consider the legal and practical implications thoroughly. Dissolution of a PT proposed by shareholders must be done carefully and in accordance with state laws and regulations. It is recommended that shareholders seek professional advice from lawyers and accountants to ensure a smooth and efficient dissolution process and minimize potential risks and conflicts. This normative review aims to contribute valuable insights regarding the dissolution of limited liability companies in Indonesia, especially if proposed by shareholders. By paying attention to legal, procedural and stakeholder protection aspects, the aim is to develop a regulatory framework that not only aligns with international standards but also facilitates a resilient and adaptive business environment. As Indonesia continues to position itself as a leading economic player, a strong dissolution framework is urgently needed to sustain long-term economic growth and foster a culture of corporate responsibility.

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