Budapest International Research and Critics Institute-Journal (BIRCI-Journal)
Humanities and Social Sciences
ISSN 2615-3076 Online)
ISSN 2615-1715 (Print)
www.bircu-journal.com/index.php/birci
Budapest Institute

Responsibility of the Board of Directors for Tax Billings of the Bankrupt Company (A Case Study of PT United Coal Indonesia's Tax Debt Claims Which Have Been Declared Bankrupt by the Commercial Court)

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Abstract

Based on the KUP Law, companies that have been declared bankrupt by the Commercial Court are still burdened with tax debt because the Commercial Court's Bankruptcy Decision only stops the company's wheels but does not stop the tax debt. On the other hand, related to tax debt, based on the Limited Liability Company Law, it is the responsibility of the company's Board of Directors, so that companies that have been declared bankrupt still have to pay tax bills as happened to PT. United Coal Indonesia (PT. UCI).

Keywords
responsibility of the board of directors, tax collection, PT. United Coal Indonesia

I. Introduction

A limited liability company (PT) is a legal entity and in carrying out its business, it can perform legal actions, namely acting as a debtor in the form of a debt agreement with more than one creditor. The legal action carried out by the company becomes a legal problem, when the company is unable to carry out its obligations to return its debts to creditors according to the time stated in the agreement, so it is due and not paid. The company's inability to fulfill its obligations to pay off its debts prevents creditors from getting their rights back according to the agreement, so that the company can be declared bankrupt.

Based on the provisions of Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the KPKPU Law) it states that:

> *"Debtors who have two or more creditors and do not pay off at least one debt that has matured and can be billed, declared bankrupt by a Court Decision, either at its own request or at the request of one or more of its Creditors".*

Based on the above provisions, basically debt is the starting point of a series of bankruptcy procedures. The application for bankruptcy proceeds from a dispute that arises as a result of the debtor not paying his debts. According to M. Hadi Shubban (2008), debt is the raison d'etre of bankruptcy. This is what happened to PT. United Coal Indonesia (PT. UCI). In its development PT. UCI) has been declared bankrupt through the decision of the Commercial Court at the Central Jakarta District Court in 2015. Directors of PT. UCI no longer has the ability to make payments on its debts to Creditors including unpaid taxes.

DOI: https://doi.org/10.33258/birci.v4i4.3329

In relation to the tax payable of PT. UCI, which has been declared bankrupt by the Commercial Court at the Central Jakarta District Court, the South Jakarta One Tax Service Office (KPP Besar Satu Taxpayer) collects PT. UCI was charged to Taufik Surya Dharma as the Board of Directors of PT. UCI of Rp. 193,625,721,483.00. The tax collection made by the KPP for the Large One Taxpayer against the Board of Directors of PT. UCI is based on the provisions of Article 2 paragraph (6) of the KUP Law and Article 32 paragraph (2) of the KUP Law.

In the perspective of the KUP Law, the Bankruptcy Decision on PT. UCI, on the grounds of insolvency, does not remove the state's position to collect the insured's tax debt. The state has pre-emptive rights which include tax principal, interest, fines, increases and tax collection fees, this is in accordance with what is stated in Article 21 paragraph (1) of the KUP Law which states that, "The state has a pre-emptive right to tax debts on goods property of the tax bearer".

With PT. UCI after being declared bankrupt, the Board of Directors of PT. UCI also personally has to pay tax debts that have not been paid and continue until there is payment of the tax debt. Based on Article 3 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), it states that "The shareholders of the Company are not personally responsible for the agreements made on behalf of the Company and are not responsible for the Company's losses exceeding the shares issued by the Company. owned."

But in this case, personally the Board of Directors who is also a shareholder of PT. UCI must bear all legal consequences from the granting of the bankruptcy petition. After the bankruptcy decision, the Board of Directors bears all losses to their personal assets which are claims for unpaid tax debts, even their bank accounts have been blocked by the Directorate General of Taxes (DGT), besides that they have also been banned from leaving the country and are threatened with arrest. This action was taken by the Directorate General of Taxes against the Directors of PT. UCI, due to ongoing tax debt whose value is based on unpaid tax debt. Either directly or that will arise in the future or contingent (tax payables occur continuously) every year provided that the tax year follows the calendar year unless the Taxpayer uses a financial year that is not the same as the calendar year). After the Bankruptcy Decision of the Commercial Court on PT. UCI, the Board of Directors still bear the tax debt of the bankrupt company.

Based on the description above, it will raises a problem (legal conflict) to what extent is the limitation of the liability of the Board of Directors of a Limited Liability Company for tax debts in this case a legal entity declared bankrupt and has binding power to the decision of the Commercial Court on tax debt in terms of the KUP Law and the PT Law. This study examines the legal impact on debtors who have been bankrupt but have tax debts. The responsibility of the Board of Directors for the tax debt of a bankrupt Limited Liability Company is to the extent that the shares are owned according to the Limited Liability Company Law or to personal assets. This reason is the reason for conducting research with the problem, whether the Board of Directors of a Limited Liability Company that has been declared bankrupt is responsible for the unpaid tax debt. The increase in the value of the company's shares, the higher the company value, the higher it will be (Katharina, 2021). In the current economic development, manufacturing companies are required to be able to compete in the industrial world (Afiezan, 2020). The existence of the company can grow and be sustainable and the company gets a positive image from the wider community (Saleh, 2019).

II. Research Methods

The research method used is a type of normative legal research that examines written law from various aspects. The approach method used is the statute approach and the case approach. Legal research sources can be divided into primary and secondary legal sources. Primary sources are sources of law that are authoritative, meaning authority. Primary sources consist of legislation, official records or minutes in the making of legislation and judges' decisions. Secondary sources are all publications on law which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals and research reports.

Legal materials are collected through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to research problems. The data collection technique in this research is the library technique. The data that has been obtained from the results of this study were compiled and analyzed by legal interpretation.

III. Discussion

3.1 Limited Liability Company

The word "company" refers to its capital which consists of (share). While the word "limited" refers to the responsibility of the shareholders which does not exceed the nominal value of the shares subscribed and owned (Yani, 2000). Based on Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies, it is formulated that: A Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the following requirements: requirements stipulated in this Law and its implementing regulations.

Furthermore, Article 97 paragraph (1) of Law no. 40 of 2007 concerning Limited Liability Companies states that: The

(1) The Board of Directors is responsible for the management of the Company.
(2) The management of the Company must be carried out by every member of the board of directors in good faith and full of responsibility.
(3) Each member of the board of directors is personally responsible for the loss of the Company if the person concerned is guilty or negligent carrying out their duties in accordance with the provisions as referred to in paragraph (2).

In practice, the interpretation of Article 97 paragraph (3) of Law no. 40 of 2007 concerning Limited Liability Companies above often creates ambiguity, regarding the sentence if the person concerned is guilty or negligent in carrying out his duties, especially the criteria used to determine guilt and negligence in carrying out his duties.

According to Harahap (2011), Indonesian company law adheres to a *separate entity* and *limited liability system*. The Company's Entity is separate and distinct from its owner in this case the shareholders (*separate and distinct from its owner*). *Limited liability* does not only apply to shareholders, but also applies to other organs of the Company, namely the Board of Directors and Commissioners. In principle, all actions of the board of directors are carried out legally, in the sense that they are in accordance with their authority, for and on behalf of the company, not for personal interests, then such actions are actions of the company. Therefore, all juridical consequences of the company's actions, good or bad, profit or loss, are borne by the company itself. Thus, all liability arising from the act can only be borne by the legal entity (PT) itself, regardless of the personal (wealth) of the person who committed the act. This is in accordance with the characteristics of PT which is independent and has limited liability. However, there are those who say that the actions of the board of directors are not

always binding on the PT in question. In a sense, even though it is an act of the company, in some cases (cases) it is still possible for the company to release its responsibilities, in the sense that it must be responsible for The action taken by the directors personally, not the company (Rokhim, 2001).

3.2 Taxes Payable

Taxes include engagements born for the sake of the law (arising from the law only). The reflection of this aspect, for example, is that the taxpayer has the obligation to pay taxes (*schuld*) and if the taxpayer does not want to pay the tax, then the taxpayer is considered to have allowed his property to be taken by the state as much as the tax debt (*haftung*) (Juli, 2014). In practice, the tax debt "could be enforced" means that if the tax debt is not paid, the debt can be paid by force, such as forced letters, confiscations, auctions, and hostages.

Collection activities do not stop even though the Taxpayer/Tax Insurer experiences bankruptcy. The party assigned to settle the Taxpayer/Tax Insurer must use the property of the Taxpayer/Tax Insurer to pay tax debts because the state has prior rights over the property of the Tax Bearer. In this case, the state has a position as a preferred creditor who is declared to have pre-emptive rights to the goods belonging to the tax bearer to be auctioned in public. Meanwhile, payments to other creditors are settled after the tax debt is paid off. The provisions regarding the pre-emptive rights include: tax principal, administrative sanctions in the form of interest, fines, increases, and tax collection fees.

Based on Article 21 paragraph (3) letter a of the KUP Law, it is stated:

> *In the event that a Taxpayer is declared bankrupt, dissolved or liquidated, the curator, liquidator or person or entity assigned to settle the settlement is prohibited from distributing the Taxpayer's assets in bankruptcy, dissolution or liquidation to shareholders. or other creditors before using the assets to pay the Taxpayer's tax debt.*

Furthermore, Article 21 paragraph (4) of the KUP Law stipulates that:

> *Prior rights are lost after exceeding 5 (five) years from the date of issuance of the Tax Collection Letter, Underpaid Tax Assessment, Additional Underpaid Tax Assessment, Correction Decree, Decision Letter Objection, Appeal Decision, or Review Decision Return which causes the amount of tax to be paid to increase.*

Then based on Article 32 paragraph (2) of the KUP Law stipulates that:

> *The representatives as referred to in paragraph (1) are personally and or jointly responsible for the payment of taxes owed, unless they can prove and convince the Directorate General of Taxes that they are in their position absolutely impossible to be burdened with responsibility for the tax payable.*

Article 97 paragraph (4) of the Limited Liability Company Law stipulates the provision, "In the event that the Board of Directors consists of 2 (two) or more members of the Board of Directors, the responsibilities as referred to in Article 97 paragraph (3) shall apply jointly and severally to each member of the Board of Directors". Then in Article 104 paragraph (2) of the Limited Liability Company Law, it stipulates, "In the event that the bankruptcy as referred to in Article 104 paragraph (1) occurs due to the fault or negligence of the Board of Directors and the bankruptcy assets are not sufficient to pay all of the Company's obligations in the bankruptcy, each member of the board of directors is responsible for jointly and severally responsible for all obligations that are not paid off from

the bankruptcy estate". The abolition of tax debt can be caused by several things, namely: First, Payment, Second, Compensation, Third, Expiration, Fourth, Exemption and write-off (Mardiasmo, 2008). The confiscation of the Tax Bearer's assets has been regulated in the Law on Tax Collection by Forced Letter. However, the opening of an account in the confiscation of the Tax Bearer's assets at the Bank is specifically regulated in its Implementing Regulation issued by the Minister of Finance in the Decree of the Minister of Finance of the Republic of Indonesia Number 563/KMK.04/2000 concerning Blocking and Confiscation of Tax Bearer's Assets Deposited at Banks for Tax Collection with a warrant.

3.3 Bankruptcy of a Limited Liability Company

Basically, a company has several legal rights, including the right to own or control property (*right to own property*), the right to enter into or make an agreement (*right to a corporate seal*), and the right to sue and be sued in court (*right to sue or to be sued*). According to Agus Budiarto, a Limited Liability Company has the following elements (Budiarto, 2000):

a. The existence of assets that are separate from the personal assets of each company (shareholders) with the aim of establishing a number of funds as collateral for all corporate engagements.
b. There is a limited liability company or shareholders whose liability is limited to the nominal number of shares they own. Meanwhile, all of them at the General Meeting of Shareholders (GMS), are the highest authority in the company's organization, which has the authority to appoint and dismiss directors and commissioners, has the right to determine the outlines of policies to run the company, determine things that have not been stipulated in the articles of association and others.
c. The existence of management (directors) and supervisors (commissioners) who are a unit of management and supervisor of the company and their responsibilities are limited to their duties, which must be in accordance with the articles of association or the decision of the GMS.

A Limited Liability Company (PT) that is declared bankrupt will certainly bring legal consequences to the business and relationship between the Debtor and Creditor. The juridical consequences apply to the Debtor with 2 (two) enforcement models, namely as follows (Budiarto, 2000):

a. Applicable by law.
   The biggest consequence of being enforced by law is general confiscation of all debtor's assets (Article 1 paragraph (1) and Article 21 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations) and the debtor loses the right to manage (Article 24 Law No. 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt). Due to the large legal consequences, judges should be really careful in making decisions.
b. For certain legal consequences of bankruptcy, theapplies *rule of reason applies*.
   Other legal consequences that constitute the impact of the bankruptcy are related to the payment of compensation to employees/employees. Compensation payments will be made by referring to Law Number 13 of 2003 concerning Manpower, namely Article 95 paragraph (4) which reads: “In the event that a company is declared bankrupt or liquidated based on the applicable laws and regulations, wages and other rights from workers/labourers is a debt that has priority in payment”.

3.4 Fiduciary Duty and Responsibilities of the Board of Directors

The Principle *Fiduciary Duty* applies to the board of directors in carrying out their duties, both in carrying out their functions as management and as representatives of the company. The term *fiduciary duty* is derived from two words, namely: *Fiduciary* and *Duty.*About the term "*duty*" is widely used everywhere, which means "duty", while the term "*fiduciary"* comes from the Latin "*Fiduciary*" with the root word "*fiducia*" which means "trust" (""*trust trust*") or with the word". the verb "fidere" which means "to trust" ("to trust"). So the term "*fiduciary*" is defined as "holding something in trust" or "a person who holds something in trust for the benefit of another person is called the term "*trustee*" while the party held for his interest is called the term "*beneficiary*" (Fuady, 2002).

A person has a *fiduciary duty* when he has a *fiduciary capacity.* A person is said to have *fiduciary capacity* if the business he/she transacts or the money/property handled does not belong to him or to his/her interests. But it belongs to someone else and for the benefit of the other person, where the other person has great *trust in* him. Meanwhile, on the other hand, he must have a higher degree *of good faith in* carrying out his duties (Fuady, 2002).

The fiduciary duty principle is contained in Article 97 of the Limited Liability Company Law, which states:

(1) Board of Directors is responsible for the management of the Company as referred to in Article 92 paragraph (1) The
(2) Management as referred to in paragraph (1) must be carried out by every member of the Board of Directors in good faith and full of responsibility answer.
(3) Each member of the Board of Directors is personally responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph (2).
(4) Members of the Board of Directors cannot be held responsible for the losses as referred to in paragraph (3) if they can prove:
   a. The losses are not due to their fault or negligence;
   b. Have carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the Company;
   c. Does not have a conflict of interest, either directly or indirectly, over management actions that result in losses, and;
   d. Have taken action to prevent the occurrence or continuation of the loss.

Based on Article 97 of the Limited Liability Company Law, it expressly requires that the board of directors can be held responsible for the loss and bankruptcy of a limited liability company if the board of directors has been proven to have made mistakes in managing the company. However, if the board of directors in good faith manages the limited liability company and there is a loss and has been bankrupt, the board of directors is not responsible for all losses and debts arising from the bankruptcy of the company based on the principle of *fiduciary duty* and the principle of *debt forgiveness*.

Debt forgiveness is a legal institution that can be used as a tool to ease the burden that must be borne by the debtor because as a result of financial difficulties he is unable to make payments on his debts in accordance with the original agreement and even to the discharge of his debts so that the debt - the debt is completely written off. There are three kinds of legal responsibility, namely legal responsibility in terms of *accountability*, *responsibility* and *liability*.

Responsibility in the sense of *accountability* is legal responsibility in relation to finance, for example accountants must be responsible for the results of the bookkeeping, while *responsibility* is responsibility in the sense that they must bear the burden. Responsibility in the sense of liability is the obligation to bear the losses suffered. The application of the principle *fiduciary duty* will be in contact with the principles of other legal

institutions, so that the various legal institutions will apply simultaneously. In addition, the function of the board of directors is actually unique, in the sense that the legal relationship between the board of directors and the company can be seen from various aspects in the structure of legal theory. For example, in terms of legal rules governing the responsibility of the board of directors for the bankruptcy of a limited liability company for tax debts that have not been paid in accordance with the Law on KUP and PMK No. 68 of 2012 concerning Procedures for Write-off of Tax Receivables and Determination of the Amount of Write-off.

3.5 Responsibility of the Board of Directors for the Bankruptcy of a Limited Liability Company

a. Bankruptcy Directors Who Can Be Accounted For Tax Payables

A Company has organs in accordance with Article 1 number 2 of the Limited Liability Company Law. The Company's organs are the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. The authority of the three Company Organs is different, the GMS in accordance with Article 1 number 4 of the Limited Liability Company Law, is a Company Organ that has authority that is not given to the Board of Directors or the Board of Commissioners within the limits specified in this Law and/or the articles of association. The authority of the Board of Directors is in accordance with Article 1 number 5 of the Limited Liability Company Law, the Board of Directors is a Company Organ that is authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the purposes and objectives of the Company and represents the Company, both inside and outside the court in accordance with the provisions articles of Association. The authority of the Board of Commissioners in accordance with Article 1 number 6 of the Limited Liability Company Law, the Board of Commissioners is the Company's Organ in charge of carrying out general and/or special supervision in accordance with the articles of association and providing advice to the Board of Directors.

In accordance with their authority, the Board of Directors carries out the management of the Company for the benefit of the Company and in accordance with the purposes and objectives of the Company. The composition of the Company's Board of Directors may consist of one or more people, so that the Board of Directors appears. As the management of the Company, the Board of Directors can represent the Company both inside and outside the court. The Board of Directors has unlimited and unconditional authority, as long as it does not conflict with the law and its Articles of Association as well as the resolutions of the GMS. If the members of the Board of Directors consist of more than one person, each member of the Board of Directors is authorized to represent the Company, unless the Articles of Association provide otherwise for example the Articles of Association stipulates that only the Board of Directors is authorized.

In accordance with Article 97 of the Limited Liability Company Law: The

(1) The Board of Directors is responsible for the management of the Company as referred to in Article 92 paragraph (1).
(2) The management as referred to in paragraph (1) must be implemented by each member of the Board of Directors in good faith and full of responsibility.
(3) Each member of the Board of Directors is personally responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph (2).
(4) In the event that the Board of Directors consists of 2 (two) or more members of the Board of Directors, the responsibilities as referred to in paragraph (3) apply jointly and severally to each member of the Board of Directors.

(5) Members of the Board of Directors cannot be accounted for for losses as referred to in paragraph (3) if they can prove:
   a. the loss was not due to their fault or negligence;
   b. has carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the Company;
   c. does not have a conflict of interest, either directly or indirectly, over management actions that result in losses; and
   d. have taken action to prevent the occurrence or continuation of such losses.

(6) On behalf of the Company, shareholders who represent at least 1/10 (one tenth) of the total shares with voting rights may file a lawsuit through a district court against a member of the Board of Directors who due to his/her mistake or negligence has caused losses to the Company.

(7) The provisions as referred to in paragraph (5) do not reduce the rights of other members of the Board of Directors and/or members of the Board of Commissioners to file a lawsuit on behalf of the Company.

Based on the explanation above, it is clear that the Limited Liability Company Law adheres to the principle, *distribution of power* meaning that the authority of the Company's organs is distributed to the directors, commissioners, and the GMS. Thus, if an authority has been allocated to the board of directors or commissioners, then the GMS is not authorized to do so. However, as the holder of the highest power, the power of the GMS is also residual power, in the sense that if there is power, which is not included in the authority of the board of directors or commissioners, and is not explicitly called the authority of the GMS, then that power becomes the authority of the GMS. Thus, with respect to the powers of the directors and commissioners, theLaw adheres to the doctrine of *Limited Liability Companylimitative power* , which means that in principle they only have authority to the extent that is granted by law and or the articles of association, while the rest is the authority of the GMS.

b. Bankruptcy Directors Who Can Not Be Accounted For Taxes Payable

The management of the Company usually has the same level of authority and responsibility as a member of the Board of Directors. Thus, the authority of a Board of Directors gives him the power to make and carry out decisions related to the assigned field of duty and the responsibilities in that area of duty create an obligation for him to carry out these tasks by using the existing authority to achieve the Company's goals (Tumbel, 2014).

In accordance with Article 97 paragraph (1) of the Limited Liability Company Law, it is determined that the Board of Directors is responsible for the management of the Company as referred to in Article 92 paragraph (1). Management as referred to in paragraph (1), must be carried out in good faith and full of responsibility. Each member of the Board of Directors is personally responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions as referred to in paragraph (2) (Tumbel, 2014).

Members of the Board of Directors cannot be held responsible for losses if they can prove: (a) The loss was not due to their fault or negligence; (b) Has carried out management in good faith and prudence for the benefit and in accordance with the purposes and objectives of the Company; (c) Has no conflict of interest, either directly or indirectly, over management actions that result in losses; (4) Has taken action to prevent the occurrence or continuation of the loss.

IV. Conclusion

Based on the results of the analysis and discussion as described above, it can be concluded that the Board of Directors of a Limited Liability Company in accordance with Article 1 number 5 of the Limited Liability Company Law is the representative of the company. If the Company is bankrupt, the Board of Directors will represent it. Based on the KUP Law, because the Board of Directors is the representative of the company, the directors are automatically responsible for the tax debt. Directors (tax bearers) of PT that have been bankrupt and whose whereabouts are known are responsible for tax debts. The provisions of Article 21 of the Law on KUP and PMK No. 68 of 2012 fortifies the avoidance of tax bearers from being responsible for paying tax debts. This provision applies in the case of PT. United Coal Indonesia (PT. UCI).

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