

## THE LAW ASPECT OF LIABILITY AT LIMITED COMPANY AS A BANKRUPT DEBTOR IN INDONESIA

Maswandi<sup>1</sup>, Jamillah<sup>2</sup>, Anggreini Atmei Lubis<sup>3</sup>

<sup>1</sup>Lecturer, Faculty of Law, Medan Area University (UMA), Medan, Indonesia

<sup>2</sup>Kopertis Wil-1 Dpk Faculty of Law, Medan Area University (UMA), Medan, Indonesia

<sup>3</sup>Lecturer, Faculty of Law, Medan Area University (UMA), Medan, Indonesia

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**ABSTRACT:** *Broadly speaking, the liability of the Limited Company as a bankrupt debtor can be seen from 2 (two) aspects namely civil and criminal law as regulated by Law Number 40 Year 2007 about Limited Company and the Law Number 37 Year 2004 about Bankruptcy and the Postponement of Debt Payment Obligations. These two laws are inseparable in the Bankruptcy settlement of the Limited Company. From the civil aspect if the debt of the Limited Company is smaller than the assets of the company, the entire debt can be returned so that rehabilitation can be conducted to the company, but if the debt is greater than the asset of the debt, surely it cannot be entirely returned to the creditors so that the company can be dissolved through liquidation by the curator. Meanwhile from the criminal aspects, both the Board of Directors and the Commissioners as corporate organs can be threatened for jail as a form of liability.*

**KEYWORDS:** Legal Aspect; Liability of Limited Company; Debtor; Bankrupt

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### INTRODUCTION

In Indonesia, the regulation concerning the Limited Company (PT) is regulated according to the Law (No. 40 of 2007 in lieu of Law No. Law No. 1 of 1995 on Limited Company (UUPT), the existence of UUPT is believed to be inseparable from the emergence of various regulations relating to the improvement of the national economy,<sup>1</sup> especially with the issuance of Law No. 37 Year 2004 about Bankruptcy and Suspension of Debt Payment Obligation (UUKPKPU) which aims to provide a legal certainty for Limited Company as a debtor to be responsible for the non-fulfillment of contracts that have been agreed so as to cause harm to the creditors.

It is undeniable that in life, both an individual and a legal entity cannot live and thrive without the support of others, especially for a Limited Company as a corporation with legal status from both foreign and local companies will seek to improve its efforts by cooperating through the having cooperation contracts to increase the business capital, or if necessary when the company does not have enough money to finance the needs or activities, it can do by borrowing money from other parties with debt guarantees.<sup>2</sup>

For a Limited Company that tries to increase and add the company's finances through its contracts to other parties, either they are the contract of cooperation or debt contract sometimes do not always run smoothly and may cause problems in the future that may harm others, such as the Limited Company can no longer fulfill its obligation (achievement) to pay the sum of money from the contract due to the lack of money, while the other party has the right to wish the Limited Company to fulfill its obligation (achievement) to return or fulfill its debt. Indeed,

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<sup>1</sup> The legal entity is an entity whose existence occurs due to law or law, while the legal entity itself is born as created by law. See I.G. Rai Widjaya, *Hukum Perusahaan Perseroan Terbatas*, Kesain Blanc, Jakarta, 2003, p. 6.

<sup>2</sup> Sutan Remy Sjahdeini, *Hukum Kepailitan*, Pustaka Utama Grafiti, Jakarta, 2010, p. 2.

in general, the issues related to the company are caused by the inability of the company to continue its business activities. The inability of the company to continue its business will certainly have very wide implications for the company itself, for example the company cannot afford to pay the debt, unable to generate profit, unable to maintain its existence as a legal company to run its business. If this happens it is not impossible to undermine the financial balance of the company, which will ultimately result in the bankruptcy of the Limited Company because the company's assets are smaller than its passive.<sup>3</sup>

The creditors who know that the debtor is unable to repay his debts will compete to get his receivable payments first by forcing the debtor to deliver his goods as debt collateral. The debtor may also engage in actions that benefit only one person or several of his only but the others are not. Such creditor acts or the debtor's treatment will clearly provide the uncertainty to other creditors with good intentions who do not take the debtor's items as a settlement of the debts, so that the loans of the good-faith creditors are not guaranteed to be settled. Such action is an unfair treatment by the debtor to the creditors. This condition can be prevented through the bankruptcy institution as a manifestation of the debtor's liability.

The liability of a Limited Company as a Bankrupt Debtor is a must as a form of implementation of the justice principle under the Law No. 37 Year 2004 concerning the Bankruptcy and Postponement of the Debt Payment Obligations, and recalling before and after the bankruptcy of a Limited Company it is still possible for the debtor to rescue the assets as the company property in various ways contrary to law, even with the Limited Company declared by the Court Commerce resulted in all of the assets that are being taken care of and run by the curator.<sup>4</sup> However, the actions of the company run by the Board of Directors may transfer the assets of the Limited Company to another party. Thus, the implementation of the Limited Company is not only in the form of debt repayment to the creditors (civil law aspect), but it may be in the form of confinement demand (criminal law aspect) since the debtor is considered to have eliminated the company asset as debt guarantee. Therefore, the actions of the debtor of a Limited Company intentionally not to return the debts to the Creditor may be held accountable both civil and criminal, which responsibility is either directed against a Limited Company as a legal entity or to the Board of Directors and Commissioners as the management of a Limited Company.

## DISCUSSION

### Various Causes of Bankruptcy of the Limited Company

The Article 1 number 1 of Law No. 40 Year 2007 states that the Limited Company is a legal entity which is a capital partnership, established under the agreement, performs in business activities with the basic capital which is wholly divided into shares, and meets the requirements stipulated in this Law. When it is viewed from the definition, there are 5 (five) elements contained in the Limited Company, namely Limited Company is a legal entity, established under the agreement, doing business, there is a share capital that is divided into shares and must meet the requirements of the law.

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<sup>3</sup> M. Hadi Shubhan, *Hukum Kepailitan, Prinsip, Norma, dan Praktik di Peradilan*, Kencana Prenada Media Group, Jakarta, 2012, p. 60.

<sup>4</sup> Bernard Nainggolan, *Peranan Kurator Dalam Pembersan Boedel Pailit*, Alumni, Bandung, 2014, p. 7.

It is presumably logical if it is stated that everyone does not want to have a company, especially in the form of Limited Company which he founded to go bankrupt by not getting any profit, let alone the purpose of any establishment of a business entity is to gain the profit, so it can be said the bankruptcy of a company is not the will of the owner of the company, but many things as the causes of the bankruptcy.

Bankruptcy is a state of a company which having deteriorates to its environment resulting in low performance for a certain time and ultimately makes the company lose its resources and funds as the cause of the failure of the company to make a healthy exchange between the output which is resulted with new inputs to be obtained.<sup>5</sup> The legal company is not as different as humans that experience a natural process, whereby humans naturally experience cycles called product life cycles that is birth, toddlers, adults, old and dead. Only death is not determined at the time, but the process must be so. The Company also thus stands, grows, develops, decreases and then dies (bankrupt/closed). The only difference between a human being and a company is that the human death is determined by God, while the death (bankruptcy) of a company is determined by its performance.

In relation to the company's performance either toward the bankruptcy or the sustainability, there are various categories or classes of companies:<sup>6</sup>

1. Bubble Company, that is a company in managing not focused and managed in vain, in order to the addition and increase of the company's capital conducted by multiplying the debt.
2. Aggressive company that is a company in managing is not careful, the projects that are considered profitable not analyzed in depth, so that the company is easy to get financial shocks leading to bankruptcy.
3. Conservative Companies, that is, a very weak company in competition against the market development.
4. Sustainable Company that is a company which has a strong global competitiveness and good financial management.

Regardless of the various categories of companies that go bankrupt, bankruptcy at any time can happen and such things are not something extraordinary in the business environment. Let alone to the companies that are less good management and finances, there may be companies that initially healthy, but in the end may go bankrupt. The incident is not only in small and medium enterprises, it can happen to the large companies such as Enron, Daewoo, Polaroid, Manulife Indonesia Life Insurance, Telkomsel although eventually it is canceled, Medern Land Relaty, and so on. Indeed, the failure of various companies is not a defect for a businessman, but it is one dimension of a business risk.<sup>7</sup>

The failure of the company is not without any cause, the failure is due to the company experiencing financial distress so that it is not able to run and manage the company well, thus it is not an impossible thing that the financial difficulty is also the beginning of the bankruptcy of a company. In addition, bankruptcy is a condition in which the debtor is unable to make any

<sup>5</sup> Suwarsono Muhammad, *Strategi Penyehatan Perusahaan, Generik dan Kontekstual*, Ekonisia, Yogyakarta, 2001, p. 5.

<sup>6</sup> Philip Kotler, *Repositioning Asia : From Buble To Sustainable Economy*, Translated by David Octarevia, Salemba Empat, Jakarta, 2001, p. 157.

<sup>7</sup> Bank Indonesia, *Penerapan Z-score Untuk Memprediksi Kesulitan Keuangan dan Kebangkrutan Perbankan Indonesia*, BI, Jakarta, 1999, p. 7.

payments to the debts of his creditors. The circumstances are not able to pay normally due to the financial distress of the debtor business that has been declining.<sup>8</sup> The inability of the debtor to repay the debt to the creditor has made the debtor's status an Insolvent Debtor.<sup>9</sup> Many things that can affect for a debtor to not pay the debt which the causes are 2 (two) factors, namely Internal and External Factors. The internal factor is a factor that comes from the internal part of corporate management, while the external factors can come from the external factors that are directly related to the company's operations or macro economic factors.

Internal factors that can affect a company for not able to pay its debts (bankrupt), including:<sup>10</sup>

1. The inefficient management that will lead to continuous losses that ultimately cause the company unable to pay its obligations. This inefficiency is caused by waste in cost, lack of management and skills.
2. The imbalances in the capital held by the amount of accounts receivable-debt. The too large debt will result in large interest costs so that it minimizes the profits, can even cause any loses. The too large accounts will also be disadvantageous because the aer too many idle assets that they do not generate income.
3. Moral hazard by management. Fraud committed by the company's management can result in bankruptcy. This cheating will result in losses for companies that ultimately the bankruptcy of the company. These frauds may take the form of corrupted management or provide false information to the shareholders or the investors. Bank cases that violate the credit limit are examples of moral hazard cases in which the management violates the company management rules.

Meanwhile the external factors that can lead to bankruptcy of a company include:<sup>11</sup>

1. The changes in the customer expectations which are not anticipated by the company that resulted in the customers turn away, so that there is a decrease in income. To keep this, the company must always anticipate the needs of the customers by creating products that suit the needs of the customers.
2. The difficulty of raw material because supplier cannot supply the requirement of raw material anymore used for production. To anticipate this, the company must always establish good relations with the suppliers and do not depend on the raw material needs on one supplier only so that the risk of raw material deficiencies can be overcome.
3. The debtor factors should also be anticipated to keep the debtor from cheating by ignoring the debt. Too many receivables given to the debtor with long repayment period will result in many unemployed assets that do not provide the income, so that it causes a in great loss to the company. To anticipate this, the company must always monitor the owned receivables and the state of the debtor in order to make early protection of the company's assets.
4. The relationship that is not in harmony with the creditors can also be fatal to the survival of the company. Moreover, according to bankruptcy law in Indonesia, creditor can bankrupt

<sup>8</sup> Hadi Shubhan, *Op. Cit.*, p. 1.

<sup>9</sup> The meaning of Insolven 'is the inability to pay off the bankruptcy property caused by bankruptcy Debtor does not apply for peace, propose peace but denied, or the ratification of reconciliation is denied based on a verdict that has been in force of law (inkracht van bewijsde). See Syamsudin M. Sinaga, *Op.Cit.*, p. 6.

<sup>10</sup> Darsono dan Ashari, *Laporan Keuangan*, ANDI, Yogyakarta, 2004, p. 102.

<sup>11</sup> *Ibid.*, p. 103-104.

the company. To anticipate this, the company must manage its debt well and also establish a good relation with the creditors.

5. The increasingly tight business competition requires companies to always improve themselves so that it can compete with other companies in meeting the customer needs. The tighter competition requires the company to always improve the products produced, providing a better value for the customers.
6. The global economic conditions must always be anticipated by the company. By more integrating the economic with other countries, the development of the global economy must also be anticipated by the company. The case of China's rapid economic development which resulted in the depletion of raw material demand to China and the ability of China to produce goods at cheap prices are the examples of global economy cases that should be anticipated by the company. The high demand for steel in China which resulted in steel prices rose sharply, resulting in many metal casting industries in Klanten region bankrupt due to the increased costs so that the products become uncompetitive.

So in view of the various things mentioned above, bankruptcy can occur because of the Limited Company is experiencing financial difficulties, while the result of the financial difficulties, the company does not pay its debts. According to Peter J.M. Declercq states that: A bankruptcy petition has to state facts and circumstances that constitute prima facie evidence that the debtor has ceased to pay its debt. This is considered to be the one and only thing that the debtor cannot pay, refuse to pay, or simply does not pay.<sup>12</sup>

### **The Effect of the Law and Liability of the Limited Company Bankrupt**

In Indonesia it is not difficult to declare a company in the form of a Limited Company bankrupt. If the provision of Article 2 paragraph 1 of UUKPKPU has been fulfilled, whether the Limited Company as a debtor possess any solvent or insolvent assets of the amount of debt it bears, the company can be declared bankrupt. The ease of bankruptcy against a corporation whether incorporated or not, or against an individual due to bankruptcy law does not specify the amount of debt such as bankruptcy provisions applicable in Malaysia, Singapore and so on. The important is being fulfilled the Article 2 paragraph 1 with a simple proof, then The Commercial Court as a court of competent jurisdiction must declare bankruptcy. Although the bankruptcy of a Limited Company is very easy, the legal consequences of the company's bankruptcy are vast. Imagine a Limited Company run by the Board of Directors as a Bankrupt Debtor losing the right to administer and control the company's assets, all the Limited Company's property are confiscated for public interest and administered by the Curator from the moment of declaring bankruptcy by the Commercial Court.<sup>13</sup>

Article 2 Paragraph 1 of UUKPKPU states: a debtor who has 2 or more creditors and not paying off at least one debt that has been matured and may be collected is declared bankrupt by a court decision, either on his own request or at the request of one or more of his creditors. This provision is a requirement for the debtor, whether an individual or a Limited Company.

So with the fulfillment of the requirements with a simple proof as stipulated under the Article 8 paragraph (4) UUKPKPU, the bankrupt debtor for the sake of the law loses its right to take

<sup>12</sup> Peter J.M. Declercq, *Netherlands Insolvency Law, The Netherlands Bankruptcy Act and The Most Legal Concept*, T.M.C. Asser Press, The Hague, 2002, p. 63.

<sup>13</sup> Zaeni Asyhadie, *Hukum Perusahaan & Kepailitan*, Erlangga, Jakarta, 2012, p. 225.

care and do the deeds to the ownership of the company's property, so that the Board of Directors as the management of the organ of the company shall endeavor to control or sometimes transfer the assets of the Limited Company that has been declared bankrupt. The controlling effort of the Limited Company organs is usually done by not providing data in the form of documents relating to the property, or transferring the assets unlawfully, for example by selling or granting part or all of the assets that have been made into bundles of bankruptcy both before and after the bankruptcy statement.

For a Limited Company that has been declared bankruptcy still has assets exceeding the total amount of debt. It is certainly not so difficult to account for it by executing the whole of its debts to the creditors by the curator; it is easy for the settlement of the order is due to the debtor's assets bankrupt is still there to pay. When all the debts have been returned, then the next stage is to rehabilitate the company, so that with the rehabilitation of all business activities of the Company Limited back to normal when the company is not bankrupt. However, what if the debtor's assets are insufficient to restore all of his debts, under such circumstances does not mean that the Limited Company as a Bankrupt Debtor is exempt from his debts. The Bankrupt Debtor must remain responsible for the rest unpaid debts, that is the unique provision of bankruptcy in Indonesia that is not recognizing the absence of a pardon for a company which is not able to pay the debts that have been declared bankrupt as applicable in other countries such as the United States and so on. The Limited Company as a Bankrupt Debtor will still be held accountable in this case both civil and criminal liability.

The liability is a liability arising from an engagement. According to C.J.H. Brunner and G.T. de Jong<sup>14</sup> an engagement arises because of a legal relationship (*rechtsverhouding*)<sup>15</sup> between 2 (two) parties that is 1 (one) party as the Debtor (*schuldenaar*) has an achievement located in the field of wealth (*vermogen*), and on the other hand as the creditor (*schuldieser*) has the right to demand the fulfillment of achievement.<sup>16</sup>

Based on the Article 1338 of the Civil Code, it is quite clear that the legal relationship set forth in an agreement (consent) is valid as the Act for those who make it. The consequence of an agreement is to create rights and obligations (achievements) for the parties, so that one party is obliged to carry out the achievement, while the other party is entitled to the fulfillment of such achievement. It is against the fulfillment of this achievement that is the responsibility of the Debtor as the party who has the obligation. Thus, liability arises from the existence of an engagement.<sup>17</sup> So to be mentioned without any engagement, there will never be liability or vice

<sup>14</sup> C.J.H. Brunner dan G.T. de Jong, *Verbintenissenrecht Algemeen*, Deventer, Kluwer, 2011, p. 8.

<sup>15</sup> The legal relationship is a regulated and recognized relationship. This legal relationship will ultimately cause certain legal consequences. In this legal relationship is the relationship between the two parties in which it affords the right to one party and the obligation on the other. This relationship is governed and has certain legal consequences. The rights and obligations of these parties may be retained in the presence of the Court. See Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan*, FH UII Press, Yogyakarta, 2013, p. 6.

<sup>16</sup> Achievement is something that Debtor has to fulfill in every undertaking, and according to Article 1234 paragraph (1) the Civil Code states that there are 3 (three), they are:

1. Giving something is to give a real power over an object from the Debtor to the Creditors.
2. Doing something that Debtor is obliged to do certain acts that have been set in the alliance.
3. Do not do something that the Debtor does not do the deeds that have been set in the alliance

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Alliance is the relationship between two or more persons, located within the property of the property, where one party is entitled to the achievement and the other party is obliged to fulfill that achievement..

versa, the incidence of liability due to an engagement.<sup>18</sup> Meanwhile the engagement itself comes from both the agreement and the law.<sup>19</sup>

In the broad outline, it is known the terms *schuld* and *haftung* as the elements. *Schuld* is a Debtor's obligation to perform something of achievement to the creditors. Meanwhile *haftung* is the debtor's obligation to account for the debtor's assets as repayment if the achievement is not implemented. For example in debt agreement, *schuld* is the debtor's debt to the creditors. Each debtor has an obligation to deliver an achievement to the creditor; therefore the Debtor has an obligation to pay the debt repayment. Meanwhile *haftung* is a wealth of the debtors who are accountable as a debt repayment. The debtor is obliged to let the creditors take his or her possessions as much as the debtor's debt to repay the debt if the debtor fails to fulfill its obligation to repay the debt.<sup>20</sup>

Due to the existence of the two elements of this engagement, *schuld* and *haftung*, it is undeniable that every Debtor is obliged to execute it which is manifested in the form of liability, whereas the creditor has the right to collect it, so it is quite reasonable *haftung* very closely related to the assurance of the material that applies both in general as well as those specified<sup>21</sup> in the Article 1131 and Article 1132 of the Civil Code. The basic principle of *haftung* is contained in the Article 1131 of the Civil Code which determines that any property of the debtor, whether mobile or immovable, existing or future, becomes liable for all engagements (*alle de roerende en onroerende goederen van den schuldenaar, zoo wel tegenwoordige als toekomstige, zijn voor deszeffs persoonlijke verbintenissen aansprakelijk*).<sup>22</sup>

So, the one who can be given the burden is the Debtor as the legal subject that is the right and obligation holder. Meanwhile the legal subject does not only cover the person (*persoon*) but also the legal board (*recht persoon*), so in the legal traffic, human is not the only the right and obligation holder.<sup>23</sup> Thus, the civil liability on the Debtor is a basic for the creditor to force the debtor to be able to fulfill his liability. The civil liability is not merely submitting all his debts to the creditor, but when the debtor is bankrupt and does not submit all his debts as well as all his company's properties is gone to pay his debts, the legal Limited Company can be dissolved after being taken the bankrupt status as regulated in the Article 142 verse 1 letter e UUP.

The dissolution of the company caused by the insufficient assets for the debt repayment does not necessarily result in the completion of the tasks of the curator, in the event of the dissolution of the company, the curator who had served to execute the memorandum of the company's property is now required to carry out the liquidation by distributing the company's assets to all its creditors because it is deemed that the Bankrupt Debtor has financial difficulties which caused the insolvency of the company. Thus, the existence of the Limited Company which has been bankrupt soon ends through the acceleration of liquidation carried out by the curator so

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<sup>18</sup> In relation to the alliance there is a performance, whereas the performance is compulsory to be executed, so long as there is a Debtor still obliged to perform an achievement that may be exercised by the Creditors, if necessary with the help of the Judge. See Mr. Dr. H. F. Vollmar in his book, *Inleiding tot de Studie van het Nederlands Burgerlijk Recht*. See the opinion of Mr. Dr. H. F. Vollmar dalam bukunya, *Inleiding tot de Studie van het Nederlands Burgerlijk Recht*. Lihat dalam Mariam Darus Badruzaman, *KUHPerdata Buku III, Hukum Perikatan Dengan Penjelasannya*, PT Alumni, Bandung, 2011, p 1.

<sup>19</sup> Article 1233 of the Civil Code states "Every engagement is good because of good consent for the law".

<sup>20</sup> Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan*, FH UII Press, Yogyakarta, 2013, p. 7.

<sup>21</sup> General guarantees is a guarantee of the Debtor's wealth due to a law-based alliance, while special guarantees are born due to an agreement with a guarantee of land, fiduciary rights, mortgages and so on.

<sup>22</sup> *Ibid*, p. 10.

<sup>23</sup> Ali Rido, *Badan Hukum dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf*, PT Alumni, Bandung, 1986, p. 3.

that the civil liability resulting from the bankruptcy of a Limited Company is not only able to return all its debts to the creditors, but the dissolution of the Limited Company through the liquidation of the company. The dissolution of a company is due to bankruptcy and then liquidation, and then its status as a legal entity has expired forever. That is the difference between rehab and dissolution; both are revocation forms of a bankruptcy statement. If the rehabilitation of the revocation is done because the Limited Liability Company as the Bankrupt Debtor is deemed to still have assets to repay its debts, while the dissolution is the result of the revocation because the company is no longer able to return its debts to the creditor. So with the removal of the bankruptcy list, it is followed by the liquidation as well as company dissolution.

Besides the civil liability of the Limited Company and considering that the Limited Company as a legal entity has a management board which is fully responsible both out and into the company of the Board of Directors, and the commissaries who served as the advisor to the Board of Directors, then as the supervisor of the company's financial policy, and the Commissioner may be held criminally liability as determined in the Articles 398 and 399 of the Criminal Code, if:

1. An officer or commissioner of a Limited Company, an Indonesian Airline Company, or a Cooperative Society is declared bankrupt or whose settlement by the court has been ordered, shall be punishable by imprisonment of a maximum of 1 (one) year 4 (four) months:
  - a. If the party helps or allows performing acts that contrary to the articles of association, causing the whole or bulk of the losses suffered by the company, airline or association.
  - b. If the concerned party intends to suspend bankruptcy or settlement of the company, the airline, or association, assist or permit borrowing money on an aggravating condition, whereas it knows that bankruptcy or its settlement cannot be prevented.
  - c. If the concerned party can be blamed for not fulfilling the obligations as in the Article 6 of the first paragraph of the Commercial Code (KUHD) and the Article 27 paragraph (1) of the Ordinance on the Indonesian Airline, or that the books and letters containing records and the writings kept according to the preceding passage, cannot be shown unchanged.
2. Whereas the Article 399 of the Indonesian Criminal Code also states: The board or commissioner of Limited Company, Andil Indonesia Airlines, or a Cooperative Society is declared bankrupt or whose settlement by the court has been ordered, shall be threatened with a 7 (seven) year imprisonment if the concerned party reducing cheatingly the rights of the finance of company, airline, or association for;
  - a. Making expenses that do not exist or do not book revenue or withdrawing things from the *boedel*.
  - b. Transferring things for free or clearly below the price.
  - c. Carrying out various ways for the benefit of one of the debtors at the time of bankruptcy or settlement or at the time that the bankruptcy or settlement cannot be prevented.
  - d. It does not fulfill its obligation to make a record under the Article 6 of the first paragraph of the Criminal Code or Article 27 paragraph (1) of the Ordinance on the Indonesian Airline, and of storing and displaying books, letters, and writings under the articles.

When observing the provisions of those Articles, it can be concluded that both the members of the Board of Directors and the Board of Commissioners of the Limited Company may be subject to 1 (one) years and 4 months imprisonment if the Board of Directors and the Commissioners acts to cause loses to the Limited Company because they participate or give approval for actions that violate the Company's Articles of Association. And then both the Board of Directors and the Board of Commissioners of the Company which are declared in a bankrupt state may be criminally charged and shall be liable to a maximum of 7 years in the event of expenditure/debt with the intention of fraudulently reducing the rights of the creditors of the Company Limited to free or with prices far below fairness, this is called bankruptcy fraud (crime bankruptcy fraud) is as a type of white color crime.<sup>24</sup>

## CONCLUSION

The Limited Company is a legal entity whose regulation is regulated through the Law Number 40 Year 2007 regarding the Limited Company (UUPT), and this Limited Company is indeed much in demand by the public due to its limited liability. In carrying out its business this company has organ limited company which is implemented by the Board of Directors and the Commissioners which surely this organ as the most responsible party to the Limited Company. The Board of Directors and the Board of Commissioners in performing their duties to cooperate with certain parties in order to increase the business of the company, but sometimes they do not give the profit for the business forever. In order not to close the possibility of this Limited Company being bankrupt and making this company declared bankruptcy by the Commercial Court. With the bankruptcy of a Limited Company as a Debtor in accordance with the provisions of the Law Number 37 Year 2004 regarding Bankruptcy and Delay of Obligation of Debt Payment (UUKPKPU), the company shall be responsible to the creditors to return all its debts. The liability of the Limited Company as Bankrupt Debtor can be seen from 2 (two) aspects, namely Civil and Criminal law aspect.

Viewing from the civil law aspect, the liability of a Limited Company as a Bankrupt Debtor is obliged to return all its debts to the creditors and if all the debt is not paid due to the insufficient assets, the Limited Company may be dissolved after the revocation of bankruptcy first and then is requested the dissolving through liquidation by the curator. Meanwhile the criminal law aspects of both the Board of Directors and the Board of Commissioners as corporate organs can be prosecuted with the threat of prison confinement for 1 (one) year 4 (four) months even up to 7 (seven) years if their deeds can be proven to have made heavy losses to its creditors.

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<sup>24</sup> Munir Fuady, *Bisnis Kotor Anatomi Kejahatan Kerah Putih*, Aditya Bhakti, Bandung, 2004, p. 162.

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