IOSR Journal Of Humanities And Social Science (IOSR-JHSS)
Volume 29, Issue 1, Series 1 (January, 2024) 56-62
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

Insolvency Of Limited Liability Company (Ltd) Against The Mistake Of The Directors According An Act Of Number 40 Of 2007 On Limited Perseroants.

Siti Misnar Abdul Jalil
Guswan Hakim
Sabri Guntur
ZulharbiAmatahir
Research Scholar, Deptt. Of Law Fakulity, Haluoleo University, Deptt. Of Law FakulityLakidende Southeast Sulawesi and Deptt. Of Law FakulityTompotika University, LuwukBanggaicentral Sulawesi Indonesia

ABSTRACT
This writing aims to find out how the responsibility of the board of directors for companies that are declared bankrupt due to the fault of the directors. This research uses a normative juridical approach, where data is collected through the study of library materials and interviews and then analyzed with explorative, descriptive and explanatory methods qualitatively.From the results of this study it is concluded that the responsibility of the Board of Directors in the bankruptcy of a limited liability company, as follows; The Board of Directors of a Limited Liability Company is fully responsible for the bankruptcy of a Limited Liability Company, if the bankruptcy of the Limited Liability Company is caused by the errors and negligence of the Board of Directors of the Limited Liability Company in carrying out their duties; With the fault of the Board of Directors, the Board of Directors is responsible for the bankruptcy of a limited liability company resulting from the fault of the Board of Directors, including managing a limited liability company in a manner contrary to the articles of association to cause all or most of the losses suffered by the company and so on.

Date of Submission: 25-12-2023 Date of Acceptance: 05-01-2024

I. Introduction

ACT OF Number 40 of 2007 Concerning Limited Liability Companies are considered to be in accordance with the development of the law and the needs of society, therefore in the context of enhancing national economic development it is very important to provide a legal basis in the form of a more robust law for the business world in the face of developments in the world economy and technology in the era of globalization which can guarantee the implementation of a conducive business climate. This law is Law No. 40/2007 on Limited Liability Companies.

At the outset, the enactment of the 1995 Limited Liability Company Law was expected to bring changes to the country's economy. towards a better direction. But these expectations did not match reality, because of monetary developments that Indonesia had never experienced in the previous 30 years, namely the monetary crisis that hit the Indonesian nation around 1997-1998 and could not be resolved properly. The economic crisis that hit the Indonesian nation resulted in companies in Indonesia suffering losses and even destruction due to the uncertain financial condition of the country. This requires the enactment of legal provisions that can provide more legal protection to creditors and debtors in business activities in this country of Indonesia. The legal protection in question is:

1) For debtors who are actually healthy and prospective, but are solely affected by the monetary crisis, it is necessary to provide an opportunity to conduct a negotiation to restructure loans in various ways, so that debtors can rise to improve their financial condition.
2) Both preferred and concurrent debtors can ensure that their rights in accordance with their order can be exercised against the debtor.

The government took steps to overcome the prolonged monetary crisis by reviewing all laws and regulations so that the Indonesian economy would not be further destroyed:

1) Establishing a new law regulating Limited Liability Companies (Perseroan Terbatas) The Limited Liability Company Law and in this law it is emphasized in Article 160 that: "when this law comes into force, law Number 1 of 1995 concerning Limited Liability Companies (State Gazette of the Republic of Indonesia of

1995 Number: 13, Supplement to the State Gazette of the Republic of Indonesia Number: 3587) is revoked and declared invalid".

2) Law No. 4 of 1998 Concerning the Stipulation of Government Regulation in lieu of Law No. 1 of 1998 Concerning Amendments to the Bankruptcy Law into Law(Bankruptcy Law) was perfected by replacing it with Law Number 37 of 2004 concerning Bankruptcy and postponement of debt payment obligations.

Limited Liability Company as a form of corporate organization that is widely known in the business world in the course of doing business often experiences losses or even the destruction of the limited liability company. Based on this, the bankruptcy law, which was later replaced by the bankruptcy law and the postponement of debt payment obligations, should be a form of law that provides protection to creditors or debtors relating to the loss or destruction of a Limited Liability Company. Implementing the provisions of the Bankruptcy Law as a form of law that provides protection to creditors and debtors in relation to the continuity of a Limited Liability Company is a complicated process and requires in-depth knowledge and information about the form of the troubled corporate organization and the main business of the corporate organization, the nature and terms of the transaction that gave rise to the creditor's claim, the condition and prospects of the debtor's business, the law governing the legal relationship between the creditor and the debtor, the jurisdiction in charge of the settlement of the claim, and the enforceability of the promised terms and legal provisions applicable to the settlement of the claim.

The form of the company's organization, the nature and terms of the transaction, the condition of the debtor's prospective business, and so on are matters that greatly affect the implementation of the provisions of the Bankruptcy and Suspension of Debt Payment Obligations Law so that in its application it can be examined how a loan can be determined to be overdue, how to determine the amount of the bill for verification, how to determine the order of collateral that gets the main rights or preferences, to what extent the limits of reasonable protection for debtors, who is entitled to represent debtors or creditors in the process and which party is responsible in a bankruptcy case if the debtor is a business entity that has different organs, duties and positions in it.

The need to pay close attention to these matters in implementing the provisions in the Bankruptcy Law and Suspension of Debt Payment obligations is because bankruptcy law must guarantee company growth within the framework of national economic development, where a healthy economy requires companies that are economically sound. Bankruptcy institutions must be able to direct efforts to grow companies that are truly economically sound. So that bankruptcy law can truly function as a form of law that provides protection to creditors and debtors so that it can be a way out to solve the economic and financial problems that occurred as a result of the monetary crisis that hit the Indonesian nation. The relationship with Limited Liability Companies as a common form of business organization at this time is a very important thing to pay attention to in a bankruptcy process so as to obtain certainty about which party will be responsible if the limited liability company as the debtor is bankrupted. This is because in order to carry out the function of bankruptcy law as a form of law that protects debtors and creditors, if a limited liability company as a debtor is bankrupted, it must be looked at whether it is true that the limited liability company deserves to be bankrupted or whether the limited liability company actually does not deserve to be bankrupted. because there are certain parties in the limited liability company who should be made bankrupt

Regarding the responsibility of organs in a limited liability company if the limited liability company is bankrupted / filed for bankruptcy, which must be considered carefully, is the responsibility of the Board of Directors of the limited liability company "because in a limited liability company it is the organ of the company that is fully responsible for the management of the company for the interests and purposes of the company and represents the company both inside and outside the Court in accordance with the articles of association (RudhyPrasetya, 1999: 16).

Bankruptcy of a Limited Liability Company due to the fault of the board of directors based on Law No. 40 of 2007 concerning Limited Liability Companies.

Based on the provisions of Law Number 40 of 2007 in Article 1 paragraph (5):

"The Board of Directors is an organ of the company that is authorized and fully responsible for the management of the company for the benefit of the company, in accordance with the aims and objectives of the Company and represents the Company, both inside and outside the Court in accordance with the provisions of the articles of association".

Meanwhile, according to I.G. Rai Widjaja (2000: 208) states that:

"The existence of the Board of Directors in a company is a must or in other words, the company must have a board of directors because the company is an artificial person who cannot do anything without the help of members of the board of directors as a natural person".

Furthermore, the existence and function of limited liability company directors based on Law Number 40 of 2007 concerning Limited Liability Companies can be seen from the following provisions:

1) Article 1 paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies which states that the organs of the company are the general meeting of shareholders, the board of directors and the board of commissioners.
2) Article 1 paragraph (5) of Law Number 40 of 2007 concerning Limited Liability Companies which states that the board of directors is a corporate organ that is fully responsible for the management of the company for the benefit of the company, in accordance with the aims and objectives of the company and represents the company both inside and outside in accordance with the provisions of the articles of association.
3) Article 92 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies which states that the board of directors carries out the management of the company for the benefit of the company and in accordance with the aims and objectives of the company.
4) Article 98 of Law Number 2007 concerning Limited Liability Companies which states that the board of directors represents the company both inside and outside the court.
5) Article 97 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies which states that the board of directors is responsible for the management of the company as referred to in article 92 paragraph (1), and paragraph (2) which states that the management as referred to in paragraph (1) must be carried out by each member of the board of directors in good faith and full responsibility.

In carrying out their duties, the Board of Directors is given full rights and powers, with the consequence that every action and deed carried out by the Board of Directors will be considered and required as the actions and deeds of the Company, as long as they act in accordance with what is specified in the Articles of Association and do not exceed the limits of their authority.

As for the actions of the Board of Directors that are detrimental to the Company, which are carried out outside the limits of the authority given to them by the Articles of Association (ultra vires), may not be recognized by or as actions of the company. Thus this means that the board of directors is personally responsible for any action that is outside the limits of authority granted in the company's articles of association.

According to I.G. Rai Widjaya, (2000: 75) states that: The Board of Directors is fully responsible for the management of the company. What is meant by fiduciary duty is the duty carried out by directors who are fully responsible for (benefit) other people or parties (the company) the board of directors performs duties and obligations for legal actions based on the ability and prudence (duty of skiil and care) needed to realize the interests of the company.

Forms of Responsibility of Directors Who Filed for Bankruptcy Against Limited Liability Companies by Creditors.

Duties, Authorities, and Responsibilities of the Board of Directors of a Limited Liability Company

In order to carry out the function of bankruptcy law as a form of law that protects debtors and creditors, in every bankruptcy case against a limited liability company, it is very important to examine in depth the work of the Limited Liability Company's board of directors as an organ that carries out the management of the company. The Board of Directors is very important to be considered in relation to the bankruptcy of a limited liability company because the board of directors is the party that is fully responsible for the management of the company for the benefit of the company and the company's objectives, as which has been expressly stated in Article 1 paragraph (5) of the Limited Liability Company Law which reads:

"The Board of Directors is an organ of the company that is authorized and fully responsible for the management of the company for the benefit of the company, in accordance with the aims and objectives of the company and represents the company, both inside and outside the court in accordance with the provisions of the articles of association."

This is then reaffirmed in Article 92 paragraph (1) of the Limited Liability Company Law which reads:

"The Board of Directors carries out the management of the company for the benefit of the company in accordance with the aims and objectives of the company".

As the party fully responsible for managing the company, of course, the board of directors plays an important role in matters that occur in the continuity of the company, including what if the company is bankrupt or files for bankruptcy. In relation to the bankruptcy of a limited liability company, the limited liability company law provides an arrangement relating to the board of directors, namely in Article 104 of the Limited Liability Company Law as follows:

Paragraph (1): The Board of Directors is not authorized to file a petition for bankruptcy against the company itself to the commercial court before obtaining the approval of the general meeting of shareholders (GMS), without prejudice to the provisions as stipulated in Law Number 37 of 2004 concerning bankruptcy".
Paragraph (2): In the event that the bankruptcy contem plated in 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 Com pany's

obligations under the bankruptcy, each m ember of the Board of Directors shall be jointly and severally liable for all obligations not paid from the bankruptcy assets. Paragraph (3): The liability contem plated in paragraph (2) shall also apply to erring or negligent m embers of the board of directors who have served as m embers of the board of directors during the preceding five (5) years. Paragraph (4): Members of the board of directors are not liable for the bankruptcy of the company as referred to in paragraph (2) if they can prove it:

a) The bankruptcy was not due to his/her fault or negligence
b) Has carried out management in good faith prudence, and full responsibility for the interests of the company
c) Has no conflict of interest either directly or indirectly over the management actions taken
d) has taken action to prevent bankruptcy.

To be able to find out whether the board of directors is guilty or not of carrying out the management of the company, it can be determined how the responsibility of the Board of Directors should be if the limited liability company is bankrupted or filed for bankruptcy in accordance with the provisions of Article 92 paragraphs (1) and (2) and Article 104 paragraph (2) of the Limited Liability Company Law. First, what must be known first are the duties, responsibilities and authorities of the Board of Directors in a limited liability company based on the law and theories relating to the position of directors or theories relating to limited liability companies, which can be used as a benchmark to determine the boundaries between actions that can be categorized as mistakes or actions that can be justified in the management of a limited liability company.

In terms of the discussion of the responsibility of the Board of Directors in the civil field of a limited liability company, Sutan Remy Sjahdeini (2002: 419) states that: "In discussing the civil liability of members of the Board of Directors and commissioners (and also the liability of shareholders) of Indonesian debtor companies, it must be done by examining how the responsibility is regulated in the limited liability company law, which is made by taking over legal doctrines or legal principles from company law (company law or corparotian law) England and other countries that adhere to the common law system ".

For this reason, it can be concluded that in conducting research or study of laws or theories (teachings) regarding the Board of Directors of a limited liability company to find the duties, responsibilities and authorities of the board of directors as a basis of reference to determine the fault and responsibility of the board of directors of a limited liability company in Indonesia in carrying out the management of a limited liability company in general and in the bankruptcy of a limited liability company in particular, means conducting research and study of legal theories or teachings based on the common law system.

Limitation of the Authority of the Board of Directors of a limited liability company

This is in accordance with the opinion of Sutan Remy Sjahdeini (2002: 437) which states that public documents do not disclose certain things that must be fulfilled for the validity of the actions of the directors or transactions of the company carried out with outside parties, things that cannot be known by outsiders only the public documents are:

1) Have the directors been duly appointed?
2) Do those who declare themselves entitled to act as directors have the authority to act as they do?
3) Have General Meetings of Shareholders or meetings of the board of directors been convened by giving proper notice?
4) Has the General Meeting of Shareholders or meeting of the board of directors been convened in compliance with the prescribed quorum?
5) Has voting in order to make decisions been carried out properly?
6) Has the decision taken by the board of directors been forwarded by the board of directors to the parties who need to know and or to whom the decision applies?

The limitation on the application of the doctrine of public documents rule or doctrine of constructive notice is the doctrine of the indoor management rule. The indoor management rule doctrine states that: "Outside parties are not required to carry out research to ensure that all internal regulations of the company have been complied with. These outside parties have the right to assume that all matters relating to internal management and procedures required according to the company's articles of association have been fulfilled."

Munir Fuady (2002:44) further argued that: "Even though the limited liability company law does not explicitly determine whether the indoor management rule applies in Indonesia or not, the limited liability company law also does not prohibit it and remembers the main principle "The principle of this doctrine is to achieve justice by protecting third parties who have good intentions as a principle enforced by every modern legal system, so this doctrine applies in Indonesia to a certain extent."

Furthermore, Munir Fuadi (2002 :92) stated that in the world of law the application of the above doctrine is recognized with certain restrictions which vary from country to country. But these restrictions generally revolve around things:

1) The party carrying out the company's activities has the authority to do so.
2) The parties have not relied on the forged documents.

3) Third parties who carry out activities with the company are third parties who have good intentions.
4) Third parties carrying out activities with the company have carried out appropriate investigations into the transaction.

The limited liability company law regulates the bankruptcy of a limited liability company in relation to the responsibilities of the Board of Directors as the organ that is fully responsible for managing the company, in Article 90 paragraph (2) of the limited liability company law which states: "In the event that bankruptcy occurs because errors or negligence of the Board of Directors and the company's assets are not sufficient to cover losses resulting from bankruptcy, then each member of the Board of Directors is jointly and severally responsible for those losses."Furthermore, Article 90 paragraph (3) of the Limited Liability Company Law states that: "Members of the Board of Directors who can prove that the bankruptcy was not due to their fault or negligence are not jointly and severally liable for the loss."

An understanding of "good faith" and full responsibility referred to in this article can be found in the teachings regarding the duties of directors of limited liability companies, consisting of statutory duties, which mean duties or obligations that are expressly determined by law, and fiduciary duties, which are what this means is the duties or obligations that are based on the trust of the shareholders who hand over the management of the limited liability company to that organ; and duties of skill, care and diligence, which means duties based on skill, prudence and regulation.

Directors are said to have carried out their duties in good faith, if the directors have carried out their duties by seriously paying attention to the interests of the company, shareholders, workers and other stakeholders and the directors have been said to have carried out their duties with proper purpose.) if the directors carry out their duties in a way that does not violate the law, does not conflict with the public interest, and also does not conflict with the articles of association.

In the event that the directors have a conflict of interest with the limited liability company or a conflict of duties, then the directors have violated their fiduciary duties. A conflict of interest or conflict of duties can occur in the event that the directors enter into a contract with the company, the directors have secret benefits, if there is an abuse of trust, there is competition between the directors and the company; Meanwhile, misuse of company assets, trade secrets and confidential information from the company.

Responsibilities of Directors in the Civil Sector

The responsibility of directors in connection with the bankruptcy of a limited liability company can be divided into two types, namely civil responsibility and criminal responsibility. Civil liability in the bankruptcy of a limited liability company is regulated in Article 90 paragraph (20) of the Limited Liability Company Law which states: "In the event of bankruptcy, there is an error or negligence of the Board of Directors and the company's assets are not able to cover the losses resulting from the bankruptcy, then each member of the Board of Directors are jointly and severally responsible for the loss."

In Article 90 paragraph (3) of the Limited Liability Company Law which states that: "Members of the Board of Directors who can prove that the bankruptcy was not due to error or negligence are not jointly and severally liable for the losses"Furthermore, regarding the responsibilities of the Board of Directors of a limited liability company, in implementing bankruptcy law and postponing debt payment obligations., in relation to limited liability companies, further matters which are strictly regulated in the limited liability company law which have a very strong correlation with implementation. Bankruptcy law and suspension of debt payment obligations. as contained in article 104 of the limited liability company law. In the limited liability company law it is not regulated expressly, what if it turns out that the management takes actions that go beyond and/or are regulated in our country's laws, which has become a teaching, when the management takes actions that go beyond and are contrary to the articles of association (which in the United States literature is said to be ultra vires), then the act must be viewed solely as a personal act of the management, and not an act of the company. Furthermore, the consequence is that the company is not liable, but is solely the personal responsibility of all management.

'The doctrine of ultra vires is essentially a teaching which states that the Directors of a Limited Liability Company may not carry out activities outside their authority (ultra vires activities). According to this doctrine, if a contract is made by P.T. is not within the framework, aims and objectives of the limited liability company, then the contract is said to be ultra vires the company, and the contract is invalid or null and void by law. If the directors carry out these activities, and as a result the limited liability company experiences a loss, the limited liability company can ask the relevant directors to compensate for the loss because they have neglected their obligations.

In the event of bankruptcy of a limited liability company, in the limited liability company law, bankruptcy matters are specifically regulated in relation to the Board of Directors as an organ of the Company which is fully responsible for managing the Company for the purposes of the company as well as representing the company both inside and outside the Court, which is regulated in article 98 paragraph (1) of the limited

liability company law. Article 104 of the Limited Liability Company Law states as follows: Paragraph (1): "The Board of Directors is not authorized to submit a bankruptcy petition for the Company itself to the Commercial Court before obtaining approval from the General Meeting of Shareholders (GMS), without prejudice to the provisions as regulated in the law. regarding Debt Payment Bankruptcy".

Paragraph (2): "In the event that bankruptcy as referred to in paragraph (1) occurs due to an error or negligence of the Board of Directors and the bankruptcy assets are insufficient to pay all of the Company's obligations in said bankruptcy, each member of the Board of Directors is jointly and severally responsible for all outstanding obligations. from the bankruptcy estate."

The exception to the above is if the Directors can prove that the bankruptcy was not their fault, even though the Directors have carried out the management in good faith and with great care and have tried to take action to prevent bankruptcy. Based on the above, the application for the Board of Directors must obtain approval from the general meeting of shareholders (GMS). Apart from this, if a limited liability company is filed for bankruptcy or filed for bankruptcy, it must be examined in depth as to whether the Board of Directors has contributed to errors/negligence or not. , because the Directors' errors/negligence can have different legal consequences.

With the enactment of the provisions of Article 104 paragraph (2) mentioned above, Sutan Remy Sjahdeni (2002: 439) stated that the Indonesian Limited Liability Company Law not only recognizes but emphasizes that up to his personal assets to cover the debt shortfall of the company he leads occurs due to errors or negligence. directors, and the proceeds from the sale of the company's assets are not sufficient to cover all the company's debts and company costs which must be covered with the proceeds from the sale of the assets.

A reference for finding the form of responsibility of directors can also be based on Article 97 paragraph (3) of the Limited Liability Company Law which reads: "Each member of the Board of Directors is fully personally responsible if the person concerned is guilty or neglects to carry out their duties in accordance with the provisions as intended in paragraph (1)".

The liability of a debtor who commits an act of default will be a problem if the debtor is a debtor who has more than one creditor, because of liability for or fulfillment of obligations towards other creditors. This happens if more than one creditor has separate intentions in asking for responsibility or fulfillment of obligations towards one debtor. So that the rights of each creditor can be protected or guaranteed repayment, the creditors must act together, in accordance with Article 1132 BW, which reads:

"These objects become a joint guarantee for all those who benefit from them: the income from the sale of these objects is divided according to the principle of balance, namely according to the size of the receivables of each person, unless there are valid reasons among those who are receivable. takes precedence:

Joint action by creditors in claiming their rights can, among other things, be carried out through debtor bankruptcy, which if a debtor is bankrupted, then the debtor loses the authority to manage his assets, and then a curator is appointed to manage the assets to be used as payment for any the debtor's debts equally to all creditors taking into account the position of these creditors.

There are currently specific regulations regarding bankruptcy, namely the Bankruptcy Law and the suspension of debt payment obligations, which also regulates the institution or body that has the authority to resolve bankruptcy cases, namely the Commercial Court. Based on Article 2 paragraph (1) of the Bankruptcy Law and suspension of debt payment obligations, every debtor, whether individual or legal entity, can be declared bankrupt by the Court, namely if:

1) A debtor who has two or more creditors and does not pay in full at least one debt which is due and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors.
2) The application as intended in paragraph (1) can also be submitted by the prosecutor's office for the public interest.
3) In the event that the debtor is a Bank, the application for a bankruptcy declaration can only be submitted by Bank Indonesia.
4) In the case of debtors from Securities Companies, Stock Exchanges, clearing and guarantee institutions, Depository and Settlement Institutions, applications for bankruptcy can only be submitted by the Capital Market Supervisory Agency.
5) In the event that the debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the public interest sector, the application for a bankruptcy declaration can only be submitted by the Minister of Finance.

Bankruptcy of a Limited Liability Company according to the Limited Liability Company Law regulates bankruptcy specifically, namely in relation to the responsibilities of the Board of Directors. This is regulated in Article 92 of the Limited Liability Company Law.

Paragraph (1): "The Board of Directors carries out the management of the Company for the interests of the Company and in accordance with the aims and objectives of the Company"

Paragraph (2): "The Board of Directors has the authority to carry out the management as intended in paragraph (1) in accordance with policies deemed appropriate within the limits specified in this Law and/or the articles of association.

Meanwhile, Article 97 of the Limited Liability Company Law states as follows:

Paragraph (1): "The Board of Directors is responsible for the management as intended in Article 92 paragraph (1)."

Paragraph (2): The management as referred to in paragraph (1), must be carried out by every member of the Board of Directors in good faith with full responsibility."

Paragraph (3): "Each member of the Board of Directors is fully personally responsible for losses to the Company if the person concerned is guilty or neglects to carry out their duties in accordance with the provisions referred to in paragraph (2)."

Paragraph (4): "In the event that the Board of Directors consists of more than 2 (two) members of the Board of Directors, the responsibilities as intended in paragraph (3) apply jointly and severally to each member of the Board of Directors."

Paragraph (5): "States that members of the Board of Directors cannot be held responsible for losses as intended in paragraph (3) if they can prove that the losses were not due to their fault or negligence."

The Board of Directors is the party in the spotlight in the event of bankruptcy of a limited liability company. because the board of directors is an organ of a limited liability company which has the full task of running the company, different from the organs of other limited liability companies, namely the General Meeting of Shareholders (GMS), which is based on article 1 paragraph (2) and paragraph (4) of the limited liability company law which is stated as company organs that have authority not granted to the Board of Directors or Board of Commissioners, within the limits specified in this Law and/or the articles of association.

This can be seen in Article paragraph (5) of the Limited Liability Company Law which states that "The Board of Directors is a Company organ with authority and full responsibility for the management of the Company, for the interests of the Company in accordance with the aims and objectives of the Company and representing the Company, both inside and outside out of court in accordance with the provisions of the articles of association."

Bankruptcy law is considered to no longer support, guarantee certainty, orderliness, enforcement, legal protection of justice and truth. For this reason, the government took steps to replace the bankruptcy law with a bankruptcy law and postpone debt payment obligations. The Monetary Crisis that occurred in Indonesia has had an unfavorable impact on the national economy. The increasingly rapid development of the world economy which is also followed by the development of the economy and trade in Indonesia, in reality more and more debt and receivable problems arise in society, giving rise to great difficulties for the business world in resolving debts and receivables to continue their activities, and many companies even go bankrupt.

To determine errors or negligence of directors in carrying out their duties as intended in Article 104 paragraph (2) of the Limited Liability Company Law and also Article 97 paragraph (3) of the Limited Liability Company Law mentioned above, regarding duties, theories or doctrines can be used. as explained above regarding the duties, responsibilities and forms of error of directors of a limited liability company, such as statutory duties, fiduciary duties, duty of care, business judgment rule or doctrine of ultra vires.

II. Conclusion

The responsibilities of the Board of Directors in the bankruptcy of a limited liability company can be concluded as follows:

1. The Directors of a Limited Liability Company are fully responsible for the bankruptcy of a Limited Liability Company, if the bankruptcy of the Limited Liability Company results from errors and negligence of the Directors of the Limited Liability Company in carrying out their duties
2. Due to an error by the Directors, the Directors are liable for the bankruptcy of a limited liability company resulting from the Directors' error, including managing the limited liability company in a manner that is contrary to the articles of association, causing all or most of the losses suffered by the company and so on.

References

[1]. Abdul Kadir Muhammad. 1995. Introduction To Indonesian Company Law. Citra Aditya Bakti, Bandung. 2008.
[2]. Ahmad Yani And GunawanWidjaya. 2000.Business Law Series: Limited Liability Company. Raja GrafindoPersada, Jakarta.
[3]. AgusBudiarto. 2002. Legal Position And Responsibilities Of Limited Liability Company Founders. Ghalia Indonesia. Jakarta.
[4]. GatotSupramono. 2007. The Position Of Companies As Subjects In Civil Lawsuits In Court, RinekaCiperseroanLimiteda, Jakarta.
[5]. GunawanWidjaja. 2008. Legal Risks As Directors, Commissioners And Owners Of Limited Liability Companies. Friends Forum, Jakarta.
[6]. _____ 2001. Responsibility Of Directors For Company Bankruptcy. Raja GrafindoPerdada, Jakarta.
[7]. Munir Fuady. 2002. Business Law. Volumes I, And Ii, Citra Aditya. Bandung.
[8]. I.G. Rai Widjaya. 2006. Limited Liability Company Law. Megapoint Division FromKesaint Black, Jakarta.
[9]. John Ibrahim. 2006. Company Organization Law - Partnership Patterns And Legal Entities. Refika Aditya, Bandung.

[10]. RudhiPrasetya. 2001. Independent Position Of Limited Liability Companies. Cet. Iii, Citra Aditya Bakti, Bandung.