



## Liquidator Professional Responsibility in Company Liquidation

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### **Abstract**

The dissolution of a Limited Liability Company is basically something that isn't desired by the shareholders, therefore the implementation of the dissolution of a Limited Liability Company should be avoided as much as possible, because the dissolution of a Limited Liability Company will provide great losses for the shareholders of the company and the parties directly related to the Company Limited. Pursuant to Article 142 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, the dissolution of a Company may occur due to: First, based on the resolution of the General Meeting of Shareholders; Second, because the period stipulated in the articles of association has ended; Third, based on a court order; Fourth, with the revocation of bankruptcy based on the decision of the commercial court which has permanent legal force, the Company's bankruptcy assets are not sufficient to pay bankruptcy costs; Fifth, because the Company's bankrupt assets that have been declared bankrupt are in a state of insolvency as regulated in the Law on Bankruptcy and Postponement of Debt Payment Obligations; Sixth, due to the revocation of the Company's business license, which requires the Company to conduct liquidation in accordance with the provisions of laws and regulations. Based on the research results, the liquidator must make and submit a report on the liquidation implementation process, the report contains the responsibility for the liquidation he did. Furthermore, the accountability report is given and submitted by the liquidator to the General Meeting of Shareholders, the District Court, the liquidator is obliged to notify the final result of the liquidation to the Minister, the liquidator is also required to announce the final result of the liquidation process in a newspaper, the liquidator is responsible to the General Meeting of Shareholders or the court that appointed it for the liquidation of the Limited Liability Company. There is a criminal sanction, and if it can be proven that the liquidator acted the opposite / cheated arbitrarily in the sense of not clearing all company affairs in the context of liquidation, then the liquidator can be prosecuted by reporting violations of the code of ethics, and the Liquidator has the right to attend a lawsuit in court, Liquidators have the power to maintain and dispose of assets, Liquidators have general administrative power, Liquidators have continuous control rights over the Company's liquidation assets, Liquidators have the right to sell the liquidated assets.

**Keywords:** *Responsibility; Liquidator Profession; Liquidation; Company*

## **Introduction**

In the process of economic development and modernization of a country, in this case Indonesia, several roles are still needed by a company in order to increase the rate of the economic system in a country.[1] There are several companies that have joined in increasing the pace of the economic system engaged in business, including in the form of a limited liability company.[2]

According to Article 1 number 1 of Law Number 40 of 2007 concerning Limited Liability Companies (Limited Liability Company Law), it explains that what is meant by Limited Liability Companies is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided in shares and meet the requirements stipulated in the law and its implementing regulations.[3]

One of the characteristics of a Limited Liability Company is the existence of assets separated between the company's assets and the private assets of the shareholders. Shareholders aren't personally responsible for the name of the association which is made on behalf of the company for more than the value of the shares they include.

When establishing a Limited Liability Company, the owners of capital want the company to carry out business activities for a long time, at least in accordance with what is stated in the articles of association. The owners of capital hope that the Limited Liability Companies they have established can remain in economic traffic as long as possible. However, the hopes of the founders of this company will not be fulfilled forever. Under certain circumstances or for certain reasons, the Limited Liability Company can no longer continue its activities, in other words it must be dissolved.[4]

Along with the development of the business world with its various problems, it turns out that the Limited Liability Company cannot be separated from issues that touch the existence of the company itself. Limited Liability Company as a legal entity, was born and created based on a legal process. Therefore, its closure is mandatory through a legal process. Under certain circumstances or for certain reasons, the Limited Liability Company can no longer continue its activities, in other words it must be dissolved.[5]

The dissolution of a Limited Liability Company is basically something that isn't desired by the shareholders, therefore the implementation of the dissolution of a Limited Liability Company should be avoided as much as possible, because the dissolution of a Limited Liability Company will provide great losses for the shareholders of the company and the parties directly related to the Company Limited.[6]

Based on Article 142 paragraph (1) of the Limited Liability Company Law, Company dissolution may occur due to: First, based on the decision of the General Meeting of Shareholders; Second, because the period stipulated in the articles of association has ended; Third, based on a court order; Fourth, with the revocation of bankruptcy based on the decision of the commercial court which has permanent legal force, the Company's bankruptcy assets aren't sufficient to pay bankruptcy costs; Fifth, because the Company's bankrupt assets that have been declared bankrupt are in a state of insolvency as regulated in the Law on Bankruptcy and Postponement of Debt Payment Obligations; Sixth, due to the revocation of the Company's business license, which obliges the Company to conduct liquidation in accordance with the provisions of laws and regulations.[7]

In carrying out their duties, the liquidator does not rule out the possibility of being subject to criminal responsibility. This can be seen from the elements of a criminal act regulated in the Criminal Code. Sanctions given to liquidators who commit criminal acts in dissolving a company are criminal sanctions as stipulated in the Criminal Code, and are not sanctions provided by the Limited Liability Company Law.

As for the problem here, because there has been a legal vacuum, which means that liquidators in carrying out their duties are very vulnerable to risks that arise, such as if a liquidator who has been appointed by the company is negligent in carrying out their rights and obligations. So that it can cause risks that aren't desired by each party. Therefore, we need a regulation that specifically regulates the Liability of the Liquidator.

The essence is that due to the absence of norms[8] or the absence of regulations that specifically only discuss liquidators, it's very vulnerable to risks that arise, such as if a liquidator who has been appointed by the company is negligent in carrying out its obligations. So that it can cause risks that aren't desired by each party. Therefore, we need a norm or legislation that specifically regulates the Liability of the Liquidator. In order to be used by every community in carrying out daily activities, especially activities related to the dissolution of a company, it requires efforts from either the government or the parties having an interest in it.

The axiology or benefit is to be able to improve or create new laws and regulations that specifically only discuss Liquidators. Conversely, in reality there are still philosophical problems, namely because of the absence of norms or the absence of regulations that specifically only discuss Liquidators, they are very vulnerable to risks that arise, such as if a Liquidator who has been appointed by the Company is negligent in carrying out their obligations. So that it can cause risks that aren't desired by each party. Therefore, we need a Norm or Legislation that specifically regulates the Liability of the Liquidator. Meanwhile, the juridical problem is due to the absence of norms, which means that the liquidator, in carrying out his duties, is very vulnerable to the risks that arise, such as if a liquidator who has been appointed by the company is negligent in exercising his rights and obligations. So that it can cause risks that aren't desired by each party. Therefore, we need a norm that specifically regulates the responsibilities of liquidators.[9]

The sociological problem is that the development of society, especially those who work as liquidators, wants to be able to overcome the Void in Norms related to making special rules on Liquidator Responsibilities. Based on the description of the background described above, the researchers are interested in conducting research with problems including what is the responsibility of the liquidator profession in company liquidation? And what are the legal consequences if liquidators as a profession cannot carry out their responsibilities in the company?

### ***Research Methods***

This research is normative legal research. Normative legal research is research that examines legal issues from a legal perspective in depth on established legal norms.[10]

### ***Results and Discussion***

#### **Responsibilities of the liquidator profession in company liquidation**

Liquidators are responsible to the General Meeting of Shareholders or the court which appointed them for the company's liquidation. What is meant by a responsible liquidator is that a liquidator must provide an accountability report for the liquidation he has carried out.[11]

In other words, the meaning and intentions of a responsible liquidator are as follows:[12]

- a) The liquidator must prepare and submit a report on the liquidation process;
- b) The report contains the responsibility for the liquidation it carried out. Furthermore, an accountability report is submitted and submitted by the liquidator to the General Meeting of Shareholders, District Court.
- c) The liquidator is obliged to notify the final result of liquidation to the Minister;
- d) The liquidator is also obliged to announce the final liquidation result process in a Newspaper;
- e) The liquidator is responsible to the General Meeting of Shareholders or the court that appointed him for the liquidation of the limited liability company.

### **The legal consequence is that liquidators as a profession cannot carry out their responsibilities in the liquidation of the company**

As for the legal consequences for a liquidator who is proven not to carry out the responsibilities described above, the liquidator may be subject to, the *first* is criminal sanctions.

As for the criminal sanctions relating to the actions of a person, in this case the liquidator, if not responsible for each of his duties, is criminal as stipulated in Articles 263, 264 and 266 of the Criminal Code related to falsification of letters and/or civil lawsuit against the law based on Article 1365 of the Civil Code.[13]

*Second*, if it can be proven that the liquidator has acted the opposite/cheated arbitrarily in the sense of not clearing up all company affairs in the context of liquidation[14], then the liquidator can be prosecuted by reporting violations of the code of ethics. For example, referring to the Professional Code of Ethics for the Indonesian Liquidator Professional Association, in the event that a liquidator is suspected of violating the code of ethics, the complainant (debtor/creditor and/or professional member) can submit a report in writing addressed to the Professional Honorary Board of the Indonesian Liquidator Association.

### **Legal rights and protections for liquidators**

The rights held by the liquidator are as follows:

- a) The liquidator has the right to attend challenges in court.
- b) Liquidators have the power to care for and position assets.
- c) Liquidators have general administrative powers.
- d) Liquidators have continuous supervision rights over the Company's liquidation assets.
- e) The liquidator has the right to sell the liquidated assets.
- f) Liquidators consider objections to creditors' claims.
- g) The liquidator is entitled to a fee and a successful fee in the liquidation of the company's assets.

Meanwhile, legal protection for liquidators in the Limited Liability Company Law isn't regulated because if a liquidator commits an error or negligence in carrying out his/her duties to settle all company affairs in the context of liquidation, then he can be prosecuted both civil, criminal and code of ethics indeed found guilty in court.[15]

## Conclusion

Even so for liquidators, if the liquidator receives threats or acts of violence in the field or because of carrying out his duties to settle all company affairs in the context of liquidation, the security apparatus should be obliged to protect him because the duties carried out have a strong legal basis as regulated in the Company Law Limited. There is a criminal sanction, and if it can be proven that the liquidator acted the opposite/cheated arbitrarily in the sense of not clearing all company affairs in the context of liquidation, then the liquidator can be prosecuted by reporting violations of the code of ethics, and the Liquidator has the right to attend a lawsuit in court, Liquidators have the power to maintain and dispose of assets, Liquidators have general administrative power, Liquidators have continuous control rights over the Company's liquidation assets, Liquidators have the right to sell the liquidated assets.

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