



Juridical Analysis of Partner Liabilities in Bankruptcy Process at CV Agro Sawita Mandiri Perkasa

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Abstract

According to the juridical analysis of partner liabilities in bankruptcy process at CV Agro Sawita Mandiri Perkasa, the Director of CV Agro Sawita Mandiri Perkasa had postponed the payment of debts that have been due. It aimed to determine the judge's consideration in making bankruptcy decisions and partner liabilities. This paper applies a normative juridical writing method. In addition, it draws the conclusion that the commercial court had obtained facts or circumstances which were simply proven that the requirement to declare bankruptcy, as stipulated in Article 2 paragraph (1) of the UUK-PKPU, had been fulfilled. Therefore, related to Article 8 paragraph (4), the judge must grant the bankruptcy petition. Partner liabilities, in the case of bankruptcy, mean that unlimited partner is liable for receivables to personal assets. An unlimited partner, who invests capital in partnership and involves personal property, is included the act of making an agreement. Moreover, if the limited partner participates in an agreement and action that can be equated with the unlimited partner, as what is stipulated in Article 21 of KUHD, the limited partner must also be liable to personally bear all CV debts in solidarity.

Keywords: Bankruptcy Petition; Consideration of the Judge; Judge's Decision

Introduction

The forms of business entity (business organization) that can now be found in Indonesia are very diverse in number. Some of them have changed their names in Indonesian; however, there are also some that still use their real names. The names, which are still being used and have not been changed, for example are *Maatschap* (Civil Partnership), Firm abbreviated Fa, and Limited Partnership (*Commanditaire Vennootschap*) abbreviated as CV. The names that have been Indonesianized, for example Limited Liability Company or PT, actually come from the NV designation or *Naamloze Vennootschap* (Widjaya, 2005). The existence of Limited Partnership (hereinafter referred to as CV) in business traffic has been recognized to the public, especially the business community, as a form of business entity. The basic arrangement of CV in the Commercial Law (hereinafter referred to as KUHD) (Widjaya, 2005) is not specifically/ separately regulated as the firm and civil partnership (*Maatschap*). However, some legal experts argue that CV can be subject to the enactment of articles regarding the firm partnership and civil partnership. Provisions on CV are contained in Articles 19, 20, 21 and Article 32 of KUHD.

If the provisions of Article 19 to Article 21 of the KUHD governing the Firm are examined further, CV is a Firm with a special form. Its specialty lies in the existence of limited partner who does not exist in Firm. Firm only has active partner called unlimited partner. On the other hand, besides having an active partner, CV also has a limited partner or a passive partner (sleeping partner) (Soekardono, 1991). Unlimited partner is active partner who is also called management partner or maintenance partner who runs company and establishes legal relationships with third parties. Limited partner is a passive partner who is not authorized to run the company but only has an obligation to provide capital income to the company (Sembiring, 2004). Limited partner is liable to CV only to the capital they provide. This is different from unlimited partner who is liable for the company's debt to third parties to company's private assets.

Article 19 of the KUHD states that:

The company, which is formed by lending money or also called a limited company, is established between a person or between several people who are jointly and severally liable for the whole and one person or more as a money lender.

In the structure of a CV, there are two types of partners who play a decisive role so that an entity can be referred to as a CV; i.e. unlimited and limited partners. Unlimited partner is partner who actively takes care and runs a company and establishes legal relations with outside parties; meanwhile, limited partner is not authorized to run the company but only has a liability to provide capital income to the company (Khairandy, 2013). Limited partner only acts internally in partnership; on the other hand, besides conducting internally acts, unlimited partner also plays an external role with third parties (Emirzon, 2006). If the limited partner participates in the management, that limited partner liability resembles unlimited partner liability; i.e. full liability to take care of personal assets (Article 21 KUHD) (Gerungan, 2016). In carrying out its business, the source of CV capital can be reviewed in terms of internal and external CV itself (Purwositjpto, 2005). The source of internal capital comes from the capital inflow of the administrators and sources of external capital for example derived from loans from banking institutions and non-banking institutions with certain guarantees. If the loan turns out that it cannot be returned when it is due and can be billed, the creditor or debtor can submit a bankruptcy petition against the CV to the Commercial Court (Budianto, 2013). The definition of bankruptcy, according to Law No. 37 of 2004 concerning Bankruptcy and Delay of Obligation to Pay Debt (hereinafter referred to as UUK-PKPU) contained in Article 1 paragraph (1), is a general seizure of all debtor assets. Management and bankruptcy orders are carried out by the curator under the supervision of the Supervisory Judge as stipulated in the Law. In Article 2 paragraph (1) UUK, the debtor is declared bankruptcy if the debtor has two or more creditors who do not pay at least one debt that has been due and can be billed. It can then be declared bankruptcy with a court decision on its own petition or on the petition of one or more creditors (Juwana, 2005).

A bankruptcy decision from the Commercial Court against CV Agro Sawita Mandiri Perkasa Medan was issued with number: 07/Pailit/2015/PN.Niaga.Mdn. The cases listed in the debt agreement in the bankruptcy decision included the Bankruptcy Applicant named Bernatd Simangunsong with Muhammad Yakub as the Director of CV Agro Sawita Mandiri Perkasa or the Bankruptcy Respondent I, Ety Ariyani as the Deputy Director or Bankruptcy Respondent II, and Selamat Aryadi or Bankruptcy III. The agreement made by the Bankruptcy Applicant was the supply of Fresh Fruit Bunches (FFB) to the Palm Oil Mill of CV Agro Sawita Mandiri Perkasa through Bankruptcy Respondent I provided that each FFB received would be paid according to its amount. In addition, it turned out that every Bankruptcy Applicant who supplied Fresh Fruit Bunches (FFB) to a Palm Oil Mill or Bankruptcy Respondent I was not paid in whole with the reason that almost every FFB income was underpaid and the debt repayment obligation was delayed. There was also the debt of the Bankruptcy Respondent I to another party, Syarifuddin Mangunsong. The form of the Bankruptcy Respondent I debt to other creditors was in the form of payment for the sale of unpaid FFB by the Bankruptcy Respondent I (applying for bankruptcy decision, 2015: 07).

Based on the description above, the Director of CV. Agro Sawita Mandiri Perkasa had postponed debt repayments that had been due and can be billed which are in accordance with the contents of Article 2 paragraph 1. In addition, the Bankruptcy Respondent's debt to other parties is in accordance with the contents of Article 1 paragraph 3. In this case, the rules in the partner liability do not work properly. There are unlimited partners who were not liable to settle CV debts so that it made it difficult for the appointed creditors and also curators (Heritage Halls) to complete bankruptcy. Based on the description of the above background, the author intends to examine these problems in this thesis entitled: "Juridical Analysis of Partner Liabilities in Bankruptcy Process at CV Agro Sawita Mandiri Perkasa".

Research Method

Based on the problem approach that the researcher used in this research, this is included in normative juridical analytical research. This was carried out through literature materials and field research by analyzing documents related to the research. The normative juridical method is a research method that refers to legal norms contained in legislation (Amiruddin & Zainal Asikin, 2012).

Results and Discussion

Partner Liabilities in Bankruptcy at CV Agro Sawita Mandiri Perkasa

CV manager's liabilities are closely related to legal relationships that occur on the CV internally and externally. Internal legal relations that occur in the CV are legal relationships regarding unlimited and limited partners. The basis of this relationship is the matters that have been agreed upon between each partner contained in the CV Articles of Association so that later the certificate of establishment of the CV can be used as an internal rule that binds the partners.

Limited legal provisions regarding CV explain that it is not enough to explain internal relationship by using the legal basis of the KUHD, however, it can also be found in the provisions of the Civil Code. Broadly speaking, the CV is essentially a special form of firm, and the firm is part of the civil/ *maatschap* partnership. So, some things that regulate the CV indirectly refer to many legal provisions regarding *maatschap*, which are regulated in Part Two Chapter VIII Book III of the Civil Code starting from Article 1624 to Article 1641. These articles broadly regulate CV internal relations that include:

a. Capital income

It is regulated in Article 1625 of the Civil Code. Income objects can be physical objects, money and human labor (physical and/or thought);

b. Distribution of profit and loss

It is regulated in Article 1633 and 1634 of the Civil Code. Commonly, these two things are regulated in the partnership agreement. However, if the partnership agreement is not in regulating this matter, then the rules above apply (Purwositjpto, 2005).

The earliest article governs internal relations starting from Article 1624 of the Civil Code that the establishment of partnerships is sufficient to achieve verbal will. Written requirements mean that the notarial deed is actually not requested by law; however, this is carried by consensus. This provision indirectly also applies to the establishment of CV; i.e. the establishment of a CV can be carried out by consensus/ oral. However, many entrepreneurs today have left an unwritten/oral system of cooperation and is based solely on consensus. They have used a lot of contractual systems, because it is considered

safer and more able to provide legal certainty for both parties in addition to the interests of third parties. Even though the element of trust and good faith is still inherent in every business relationship, customary law in the business world has left many non-contractual ways to initiate any business collaboration.

CV, which has been established by founding partners, then contains the ability of limited partners to provide capital income to the partners as previously promised. Article 1625 of the Civil Code regulates the income in the form of money, objects / goods in the physical sense, or only in the form of benefits (*het genot*) or income in the form of labor or thought. This Article does not only regulate the necessity for capital inflows, but also the obligation to bear and maintain the defects in the goods entered; i.e. defects in the item or defects from third party interference. If a partner cannot timely provide capital income from the agreed upon, Article 1626 paragraph (1) imposes interest on that partner. The partner who borrows money from the partnership cash must pay interest starting from the time when he/she borrows the money as stated in Article 1628 paragraph (2) of the Civil Code. The most important principle that must be upheld in every form of association is the principle of common interest which is concluded in Article 1628-1630 of the Civil Code. The principle of shared interest means that each member of the partnership is not permitted to prioritize personal interests over the interests of the members of the partnership because this principle is related to the existence of benefits that will be enjoyed by all members and also the occurrence of losses/ debts that will be borne by all member. However, it is proper for all members to prioritize common interests even without the provisions of these articles. One of the shared interests of the partnership is to obtain the maximum profit of the company.

This advantage must also be shared between partners. The provisions of the Civil Code governing the distribution of benefits and losses are listed in Article 1633-1635 of the Civil Code. According to Article 1633 of the Civil Code, the method of dividing profits and losses should be arranged when the company is established. In a business entity in the form of CV, it should be regulated in the deed of establishment of CV or Articles of Association of CV. However, if there is no agreement on how to divide profits and losses, according to Article 1633 paragraph (1) of the Civil Code, profit sharing can be carried out by setting the principle of income balance. It means that the income in the form of labor will be equated with the income of the smallest money or object (Article 1633 paragraph (2) of the Civil Code). If the CV suffers a loss, the limited partners will also bear the burden of the loss but they do not have to pay the loss until it exceeds the income limit. It is very different from unlimited partner liabilities. The burden can include personal assets that can be used as collateral for repayment of partnership debts (Article 1131 and 1132 of the Civil Code). The limited partner position, regarding profits and losses of the company, is not allowed to be demanded in order to increase revenue and it is not entitled to ask for the return that has been received (Article 1625 of the Civil Code). Meanwhile, the position of unlimited partner can be equated to the position of the firmant in the firm partnership; i.e. having the full burden of mutual liability between partners of the firm.

The partners, including limited and unlimited partners, need to discuss again in the meeting of members/ administrators so that partners, who only enter labor and thought, receive a fair profit. However, overall, it is not permissible to determine the distribution of profits and losses to third parties (Article 1634 paragraph (1) of the Civil Code). On the contrary, it is permissible to impose a loss on one partner only (Article 1635 paragraph (1) of the Civil Code) but is prohibited from providing benefits only to any partner (Article 1635 paragraph (2) of the Civil Code) because this is contrary to the basic principle of establishing a partnership; i.e. prioritizing common interests. It is also prohibited to carry out the determination of losses or profits to third parties (Article 1634 of the Civil Code). In the context of legal relations, these partners are closely related to obligations and liabilities among partners. Based on the legal relationship that can be carried out by a limited partner, it is not permissible to make legal relations with third parties. Then, limited partner liabilities are also internal liabilities; in this case, unlimited partners only submit agreed income (Article 19 of KUHD). Limited partner will be liable to the external company if he/she violates Article 20 of KUHD.

In an institution in the form of a CV between the two types of partners, it is only unlimited partners/ administrators who can establish external legal relationships with external parties. Meanwhile, limited partners do not have the authority to establish legal relations with third parties. The difference in the authority to conduct legal relations between the two partners is closely related to the representative

authority and liabilities that exist in the two partners. Article 20 paragraph (1) of the KUHD determines that the limited partner may not use his/her name as the name of the firm. Furthermore, paragraph (2) confirms that limited partners may not carry out management tasks (*beheern*), even if using a power of attorney. If the limited partner violates this provision, according to Article 21 KUHD, the limited partner has full liabilities such as unlimited partner liabilities.

The ratio, related to the provision, is used to maintain the possibility of misunderstandings from limited partners if they are permitted to carry out management duties. Meanwhile, the existing liabilities in the limited partner are limited liabilities. In this case, a third party can be harmed because of the limited partner's actions. If a limited partner continues to carry out manager duties, then the liabilities cannot be limited internally to their income, but that includes all the wealth they have even to include their personal wealth. In reviewing the authority in representation, some corporate legal experts recommend looking at the types of CVs that exist first, whether the CV includes a covert CV or an overt CV. In the type of covert CV (with one or several administrators), external relations with outside parties cannot be carried out openly by bringing/ mentioning the name of the CV for the sake of partnership. Parties who make legal connections with external parties (third parties) are the only ones that are considered by external parties (third parties) as CV administrators. In the type of covert CV, the name of the partnership is not found, but they will act using their own name even though the wealth used is not their own and is collected from the joint property with all limited partners. Covert CV only has a managing partner, so that legal relations with third parties are carried out by themselves and the full liabilities are on themselves; whereas, limited partners still have limited liabilities to their income. Therefore, it is difficult to say that in the form of a covert CV there is only an unlimited partner that has separate wealth. On the basis of the principle of Article 19 KUHD, third parties are not permitted to collect partner debt directly to a limited partner because unlimited partners must be fully liable to third parties. It is quite relevant if a third party is not permitted to collect directly to a limited partner, given that the limited partner is not known by outside parties (third parties) and is not authorized to make legal relations outside the company so that the liabilities do not reach third parties (external), will but liabilities only to internal partners.

As is well known, in a limited partnership or CV, unlimited partner liabilities that are also owners of the partnership are absolute. It means not only as much as capital income but includes personal wealth. If there are more than one unlimited partner, then the liabilities are absolute and joint and several. Absolute means that unlimited partners must be liable to their partnerships to cover their personal assets. Meanwhile, joint and several liabilities mean that it involves other unlimited partners who may not know the things that other unlimited partners have done. Therefore, every party that is harmed, including the partners themselves and creditors, can file a lawsuit against the management or the owner of the partnership for their mistakes and/or negligence so that they are liable for the losses suffered. If the partner's assets are insufficient to fulfill obligations to third parties, related to the principle of liability in an absolute CV, proof of the plaintiff's existence of negligence or error is not a requirement.

CV, in its activities as a business entity, is closely related to its existence as an actor in economic activities. As a business entity that conducts business activities, it is surely loaded with various problems. Bankruptcy on a CV can occur for various reasons. The complexity of the problem of the dissolution of a business also cannot be limited by the provisions of Article 1646-1652 of the Civil Code alone but is still possible due to circumstances outside the provisions of the Law. Legal experts argue that the provision regarding the dissolution of partnerships in the Civil Code is not absolute provision. CV, which is declared bankruptcy by the decision of the Commercial Court, does not mean that it has stopped all activities related to the affairs of the partnership. If the activity benefits assets for bankruptcy, it makes it possible for the partners to carry out their activities even if they only continue the previous transactions that have taken place; not opening or starting a new transaction. Regarding CV that has a lot of debt so that they experience bankruptcy and insufficient CV assets to pay off their debts, unlimited partner's personal property can be accounted for to pay off the company's debt. On the contrary, the limited partners' assets cannot be contested. CV assets are collateral for repayment of debt to partner creditors. Every unlimited partner action, that results in reduced partnership assets, will bring the unlimited partner to the personal liability for these shortcomings.

Based on the provisions of Article 8 Paragraph (4), bankruptcy petition must be granted if there are facts or circumstances simply that the requirements for being declared bankruptcy as referred to in Article 2 Paragraph (1) have been fulfilled. The Medan Commercial Court, in its first level, has issued a decision of bankruptcy on CV Agro Sawita Mandiri Perkasa with the decision number: 07/Pailit/2015/PN.NIAGA.Mdn. Bankruptcy petition is submitted to the Medan Commercial Court by creditors through legal counsel with debts that have been due and debt to other parties. This reason has met the provisions of Article 1 Paragraph (1) Bankruptcy Law No. 37 of 2004 and subsequently also fulfilled article 2 paragraph 1 of Law No. 37 of 2004. CV Agro Sawit Mandiri Perkasa has 2 (two) creditors and does not pay all debts that have been due and can be billed.

From the above explanation, after being declared bankruptcy by the Medan Commercial Court on July 8, 2015 with the decision number: 07/Pailit/2004/PN.NIAGA.Mdn, then the liable partner is an unlimited partner who acts as an administrator in the CV. Moreover, working partner/ active partner/ unlimited partner is partner who provides capital in partnership, actively manage businesses involving personal assets, and make agreements or relationships with third parties. In this case, liable for accounts payable is subject to personal assets. In addition, the status of a limited partner, or the so-called non-working partner/ passive partner, only provides capital and has the right to receive benefits but is not in charge of managing the partnership. If it is violated, then the liabilities are expanded, i.e. personal liabilities for the whole such as the working partner. Therefore, the legal consequence means that limited partners are considered voluntary to commit themselves to all CV management actions. In other words, they are also liable to personally bear all CV debts in solidarity. The active partner of CV Agro Sawit Mandiri Perkasa, Muhammad Yakub, carries the liabilities up to his personal assets. Meanwhile, Selamat Aryadi, which is a limited partner, only carries liabilities of capital income on CV Agro Sawit Mandiri Perkasa. CV Agro Sawit Mandiri Perkasa bankruptcy has juridical consequences for debtors.

In general, bankruptcy has legal consequences for the bankruptcy parties of a business entity. The juridical effect applies to debtors using 2 (two) methods of enforcement as follows:

1. By the Operation of Law

Juridical consequences by the operation of law are implemented immediately after a bankruptcy statement is declared or after a bankruptcy statement has a fixed power or after bankruptcy ends. Commercial Courts, Supervisory Judges, Curators, Creditors, and anyone involved in a bankruptcy process cannot directly contribute to the occurrence of such juridical matters and leave their residence (block) as referred to in Article 97 UUK of 2004; although it is still possible for the Supervisory Judge to give permission for the bankruptcy debtor to leave his residence.

2. By the Rule of Reason

The legal consequences do not automatically apply but only apply if it is enforced by certain parties after having reasonable reasons to apply. Parties who must consider the enactment of certain legal consequences, for example, are curators, commercial courts, supervisory judges and others. In the case of bankruptcy sealing, the sealing of bankruptcy debtor property can be done with the approval of the supervisor judge. So, it does not happen automatically. The reason for this sealing is to secure the bankruptcy property itself. Article 99 paragraph (1) UUK of 2004 states that sealing of bankruptcy assets can be done with the approval of the Supervisory Judge based on the reason for securing bankruptcy assets.

All legal consequences are not the same because there are things that need to be requested by certain parties but some are valid by the operation of law. Once a bankruptcy ruling is granted by the Commercial Court, it applies as shown in the following table: (Munir Fuady, 2005: 62).

Table on the Applicability of Certain Legal Consequences in the Bankruptcy Process

No	Type of Action	The Occurrence	Legal Basis on UUK of 2004
1	Blocking	By the operation of law	Article 96
2	<i>Gijzeling</i>	Must be applied to the Commercial Court	Article 93
3	Sealing	Must be asked to the Supervisory Judge	Article 99
4	Stay	By the operation of law	Article 56 (1)
5	General confiscation of debtor's assets	By the operation of law	Article 1 (1)

Munir Fuady, Bankruptcy Law in Theory and Practice, Revised Edition (Adapted to Law No. 37 of 2004), PT Citra Aditya Sakti, Bandung, 2005, page 62

Based on the above description, there are 2 (two) kinds of partners; i.e. unlimited and limited partners, each of which has different functions, tasks and liabilities as follows: (Fuady, 2005)

1. **Unlimited Partner.** Unlimited partner is active partner also called management partner or maintenance partner. This partner actively runs the company and deals with law and is liable with third parties. Thus, this work partner's liability is a personal liability for the whole. If this work partner is more than one, it must be affirmed in the articles of association whether or not some of them are forbidden to act externally to establish legal relationship/ transaction with third party (Article 17 of the KUHD).
2. **Limited Partner.** Limited partner is a partner who only provides money, objects, or energy to the partners like what he/she has been able to do. For this reason, he/she has the right to receive profits from the partnership. The limited partner's liability is only limited to the amount of capital that he/she has been able to deposit. In addition, this partner may not interfere in the management or interfere with the duties of the working partner (Article 20 of the KUHD).

Limited partners have the right to monitor the running of the company. In addition, in implementing something, unlimited partners must get approval from a limited partner. If the prohibition to interfere with unlimited partner duties is violated, then limited partner liabilities will be expanded by Article 21 of KUHD, which will apply the same as the working partner liabilities (unlimited partners); i.e. personal liabilities for the whole (Article 18 of KUHD). As a business entity that runs activities in the economic field, CV can also experience bankruptcy. Bankruptcy in a CV can occur for several reasons, for example, a CV has a lot of debt so it experiences bankruptcy. Another reason is that CV property is insufficient to pay off its debts. When CV experiences bankruptcy, there are liabilities from partners; from unlimited partners and limited partners. Bankruptcy in limited partnership also means bankruptcy of its partners and not of its partnerships. Each partner is fully liable for the limited partnership agreements. When limited partnerships experience bankruptcy, the legal liable party is the unlimited partner, since they are liable management partners for the partnership. Limited partner liabilities are only limited to the amount of capital he/she deposited (Sutantya *et. al.*, 1991).

The reason for the judge in determining the decision was to see from the legal fact that the Respondent's debt had been due and could be billed. In this case, the party has debts for the purchase of Fresh Fruit Bunches. This is acknowledged by the Respondent, until the bankruptcy Respondent receives a letter of warning (warning) from the bankruptcy Applicant. Then, the Respondent did not heed it and

did not carry out his/her obligations. On the basis of the series of legal considerations, the Commercial Court has obtained facts or circumstances and it is proven simply that the requirements for being declared bankruptcy as stipulated in Article 2 paragraph (1) UUK-PKPU have been fulfilled. So, related to Article 8 paragraph (4), the judge must grant a bankruptcy petition.

However, based on the author's analysis, the bankruptcy statement when filing a bankruptcy petition against the CV is not a bankruptcy for the CV of a business entity, but a bankruptcy for the CV partner. It has an impact on bankruptcy decisions issued by the court on the basis of its legal relationship to other parties; for instance, a bankruptcy decision is instantaneous, a claim filed with a bankruptcy debtor must go through a curator, executions other than those related to bankruptcy cases must be terminated, payment of debtor receivables, relationships with workers, and cancellation of any actions not required by the debtor on the basis of assets that might be owned in the future to harm the creditor. Regarding partner liability for bankruptcy, each partner is liable to the CV agreements. The liable party here is unlimited partner as administrator, while limited partner is only limited to paid-up capital and is not entitled to ask for the return they have received; unless if the limited partner participates in the engagement and actions that can be equated with unlimited partner as stated in article 21 of the KUHD. Then, limited partner must be jointly and severally liable with another unlimited partner. Unlimited partner is liable to personal assets and is jointly and severally liable with other unlimited partners. As an active partner of CV Agro Sawit Mandiri Perkasa, Muhammad Yakub carried the liabilities to his personal assets. Meanwhile, Selamat Aryadi, which is a limited partner, only carries liabilities of capital income on CV Agro Sawit Mandiri Perkasa. Bankruptcy at CV Agro Sawit Mandiri Perkasa has juridical consequences for debtors.

Conclusion

The judge's consideration in making a decision on the bankruptcy petition at CV Agro Sawita Mandiri Perkasa Medan is Decision No. 07/Bankruptcy/2015/PN.Niaga.Mdn. In such legal considerations, the commercial court obtains facts or circumstances that prove simply that the requirement to declare bankruptcy as stipulated in Article 2 paragraph (1) UUK-PKPU has been fulfilled. In this case, the Respondent had a debt to the Applicant who had been due and could be billed. Based on the legal facts, the Respondent's debt is due and can be billed. The Respondent had a debt for the purchase of Fresh Fruit Bunches and this was recognized by the Respondent until the Respondent obtained a letter of warning from the bankruptcy Applicant. Then, the Respondent did not heed it and did not carry out its obligations. On the basis of the series of legal considerations, the Commercial Court had obtained facts or circumstances and it was proven simply that the requirements for being declared bankruptcy as stipulated in Article 2 paragraph (1) UUK-PKPU had been fulfilled. So, related to Article 8 paragraph (4), the judge must grant a bankruptcy petition.

Liabilities of partners at bankruptcy at CV Agro Sawita Mandiri Perkasa occurs as follows: Unlimited partner is partner who provides capital in partnership, manages businesses actively and is liable for accounts payable to personal assets when bankruptcy occurs. In addition, limited partner is also called non-working partner/ passive partner and their status only contributes to capital and has the right to receive benefits but is not in charge of managing the partnership. If this provision is violated, the liability is extended to personal liabilities as a whole as those of the working partner. Therefore, the legal consequences mean that they are considered voluntary to commit themselves to all CV management actions. Based on legal relationships that can be carried out by limited partners, they are not permitted to engage in legal relations with third parties. Thus, limited partner liabilities are also internal liabilities in which they only submit the promised income to unlimited partners (Article 19 of the KUHD). Limited partners can be liable outside of the company, if they violate Article 20 of the KUHD. Therefore, they will be liable personally to bear all CV debts in solidarity. As an active partner of CV Agro Sawit Mandiri Perkasa, Muhammad Jacob took up the liabilities to his personal assets. Meanwhile, Selamat Aryadi, which is a limited partner, only covers liabilities amounting to capital income on CV Agro Sawit Mandiri Perkasa. Bankruptcy CV Agro Sawit Mandiri Perkasa has juridical consequences for debtors.

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Decision No.07/Pdt.Pailit/2015/PN.Mdn Tahun 2015 on behalf of Muhammad Yakub.

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