THE LEGAL STANDING OF CORPORATE ORGANS IN THE DISSOLUTION PROCESS OF A LIMITED LIABILITY COMPANY THROUGH A COURT DECISION

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Abstract

This study discusses the legal regulations regarding the dissolution of Limited Liability Companies based on Law Number 40 of 2007 concerning Limited Liability Companies (Company Law/UUPT) and highlights the importance of legal certainty in petitions for dissolution submitted by shareholders, directors, or commissioners to the court. The objective of the research is to analyze the legal norms within the Company Law that serve as the basis for dissolution and to identify conflicts of norms that may give rise to uncertainty in judicial practice. The research method employed is normative legal research using a statute approach as well as a conceptual approach.The results of the study indicate that the regulation of the dissolution of limited liability companies is provided in Articles 142 to 152 of the Company Law. However, issues arise regarding the legal standing of company organs entitled to submit a petition for dissolution. The conclusion of this study is that the position of company organs in the dissolution process is stipulated in Article 146 paragraph (1) letter c of the Company Law, which grants the right to shareholders, directors, or commissioners to file for dissolution if the company can no longer continue its business activities. In practice, however, differences in interpretation occur regarding the requirements for submission, including the necessity to prove that the company has been inactive for three years and has reported this to the tax authorities. This lack of clarity may lead to conflicts among company organs. Therefore, regulatory harmonization and judicial guidelines are needed to ensure that company dissolution provides legal certainty and protection.

Keywords: Limited Liability Company; Company Dissolution; Legal Certaint

1. INTRODUCTION

The economic development in Indonesia has stimulated the growth of various types of business entities, both those with legal status such as Limited Liability Companies (PT), Foundations, and Cooperatives, as well as those without legal status such as Firms and Limited Partnerships (CV). Among these forms, the Limited Liability Company (PT) has become the most dominant choice because it provides legal certainty for investors and limits the shareholders' liability to the value of their respective shares. As a legal entity, a PT consists of three main organs: the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners, each of which holds specific authorities as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the "Company Law").

One of the essential aspects of a PT's existence is its dissolution mechanism. In practice, dissolution may occur through a decision of the GMS or by a court ruling, as regulated in Article 146 of the Company Law. An application for dissolution may be submitted to the court by any of the company's organs—namely shareholders, directors, or commissioners—if the company is no longer able to continue its business activities. However, in practice, problems often arise, particularly when dissolution cannot be carried out through the GMS due to an equal balance of share ownership that leads to a deadlock in decision-making. In such circumstances, a court ruling serves as an alternative legal avenue.

Article 146 paragraph (1) letter (c) of the Company Law stipulates that dissolution may be requested when the company can no longer continue its

operations, including cases in which the company has been inactive for three years or more. Nevertheless, a legal issue arises concerning who has the lawful authority (legal standing) to submit a notification of inactivity to the tax authority as proof that the company has ceased operations. The explanatory provisions of the article do not explicitly specify whether this authority lies with the directors, commissioners, or shareholders. This ambiguity creates differing interpretations, which have the potential to generate internal conflicts among the company's organs.

The legal uncertainty regarding such legal standing becomes problematic because dissolution constitutes a legal act that has broad implications for shareholders, creditors, and other third parties. Therefore, it is crucial to conduct an in-depth examination of the legal standing of a company's organs in the process of dissolution through a court ruling, so that the process can proceed on a solid legal foundation and avoid discrepancies in interpretation in practice.Based on the aforementioned background, the following research problems are formulated:

1. How is the regulation of the dissolution of a Limited Liability Company under Law Number 40 of 2007 concerning Limited Liability Companies?
2. How is legal certainty ensured regarding the application for dissolution of a Limited Liability Company before the court, whether filed by the shareholders, the board of directors, or the board of commissioners?

2. METHOD

The research method employed in this study is a normative legal research method, which focuses on legal materials as the primary data source. These include primary legal materials, such as laws and regulations, court decisions, and other related legal provisions; and secondary legal materials, consisting of books, legal research articles, and expert opinions (Dewi, 2021, p. 137).This study adopts two approaches: the statute approach and the conceptual approach, focusing on the analysis of legal concepts such as legal entities, limited liability companies, authority, and legal interpretation. The legal materials examined comprise primary sources (the 1945 Constitution, the Civil Code, and the Company Law), secondary sources (literature, journals, and expert opinions), and tertiary sources (legal dictionaries and encyclopedias).

Data collection was carried out through library research, while data analysis employed a descriptive-analytical and legal argumentation method to evaluate the clarity and consistency of legal norms related to the legal standing of corporate organs in the dissolution of a Limited Liability Company through a court determination.

3. RESULTS AND DISCUSSION

The Legal Basis for the Dissolution of a Limited Liability Company

Law consists of norms that contain obligations or prohibitions governing society, which are genuinely accepted and practiced by the community (Indradewi, 2023, p. 21). The dissolution of a Limited Liability Company (PT) can be carried out through several mechanisms, one of which is by a court decision. The legal basis for the dissolution of a PT is regulated under Law Number 40 of 2007 concerning Limited Liability Companies (the Company Law). Article 142 paragraph (1) of the Company Law states that a PT may be dissolved for several reasons, including a resolution of the General Meeting of Shareholders (GMS), the expiration of the company's term as stipulated in the articles of association, a court decision, the revocation of the company's business license, or bankruptcy (Pandiangan, A. V., & Anindita, S. L., 2022, p. 45).

The dissolution of a Limited Liability Company (PT) is a legal process that terminates the existence of the company as a legal entity and is governed by Articles 142 to 152 of Law Number 40 of 2007 concerning Limited Liability Companies. This process includes the cessation of business activities, the settlement of assets and liabilities, and the elimination of the company's legal status. Based on Article 142 paragraph (1) of the Company Law, dissolution may occur due to a resolution of the General Meeting of Shareholders (GMS), the

expiration of the period of establishment, a court decision, the revocation of the business license, or the declaration of bankruptcy. Understanding this legal foundation is crucial to ensure that the dissolution and liquidation process is carried out in accordance with the applicable regulations and to protect the interests of all parties involved.

The dissolution of a company through a GMS is a prerogative right of the shareholders as the owners of capital. However, such a decision must be made lawfully, in compliance with the quorum requirements and the decision-making mechanisms stipulated in the Company Law and the company's Articles of Association (Muhammad, 2010, p. 256).Similar to a Limited Liability Company, a Foundation also consists of organs with specific authorities, roles, and functions. The Board of Trustees, the Management, and the Supervisory Board each have powers, duties, and responsibilities that are closely related to the foundation's performance in carrying out its operations as a unified entity to achieve the foundation's objectives (Brahmantya, 2023, p. 273).

Requirements and Procedures for the Dissolution of a Limited Liability Company

Law Number 40 of 2007 concerning Limited Liability Companies (Company Law) stipulates several ways in which a company may be dissolved:

a. **Based on the Resolution of the General Meeting of Shareholders (GMS)**

   The Board of Directors, the Board of Commissioners, or one (1) or more shareholders representing at least one-tenth (1/10) of the total shares with voting rights may propose the dissolution of the company to the General Meeting of Shareholders (GMS) (Harahap, 2011, p. 543)

b. **Due to the Expiration of the Company's Term as Stipulated in the Articles of Association**

   The process of dissolving a Limited Liability Company (PT) through a court begins with the submission of an application by an interested party to the District Court in the jurisdiction where the company is domiciled. The court will then examine the evidence and consider the reasons for dissolution (Neris, 2009, p. 80). Article 6 regarding general provisions of a company explains that if the term of the company is set at ten (10) years in its articles of association, then the company shall automatically terminate after ten (10) years from the date of its legalization, and upon the expiration of this period, the company is dissolved by operation of law (Khairandy, 2014, p. 326).

   In carrying out their duties, the Board of Directors and the Board of Commissioners are guided by the same principles. The authority of the GMS, the Board of Directors, and the Board of Commissioners must be exercised in good faith and in accordance with the company's articles of association and applicable laws and regulations. The company's organs cannot be held personally liable for corporate acts that comply with the principles governing companies in Indonesia, namely the principles of *separate entity* and *limited liability* (Adiningsih, 2019, pp. 1–16).

   Based on Article 145 concerning company dissolution in the Company Law, a company is dissolved by operation of law when the term of establishment stipulated in the articles of association expires. Within no later than thirty (30) days after the company's term of establishment expires, the General Meeting of Shareholders (GMS) must appoint a liquidator. After the term of establishment stated in the articles of association has expired, the Board of Directors is prohibited from conducting any new legal acts on behalf of the company.

c. **Based on a Court Ruling**

   Article 146 stipulates that the dissolution of a Limited Liability Company may be carried out based on a court ruling under the following conditions:

   1. A petition filed by the Public Prosecutor on the grounds that the company has violated public interest or engaged in acts contrary to laws and regulations.

2. A petition filed by an interested party on the grounds of a legal defect in the deed of establishment.
3. A petition filed by shareholders, the Board of Directors, or the Board of Commissioners on the grounds that the company can no longer continue its operations.

The elucidation of Article 146 explains that "the company can no longer continue its operations" refers, among others, to the following situations:

1. The company has not conducted any business activities (is inactive) for three (3) years or more, as evidenced by a notification submitted to the tax authorities.
2. Most shareholders cannot be located, even after being summoned through announcements in newspapers, making it impossible to convene a General Meeting of Shareholders (GMS).
3. The share ownership structure of the company is such that the General Meeting of Shareholders (GMS) cannot make a valid decision — for example, when two shareholder groups each own fifty percent (50%) of the shares.
4. The company's assets have been depleted to such an extent that it is no longer possible for the company to continue its business activities.

Normative Implications of the Dissolution of a Limited Liability Company Based on Law No. 40 of 2007 on Limited Liability Companies

One of the mechanisms for the dissolution of a Limited Liability Company (PT), as regulated under Article 142 of Law Number 40 of 2007 concerning Limited Liability Companies, is through a court ruling. Article 146 paragraph (1)(c) stipulates that a petition for dissolution may be submitted if the company has been inactive for three years or more, which must be proven by a notification letter to the tax authority. However, the Company Law does not explicitly specify who is authorized to issue such a letter—whether it is the Board of Directors, shareholders, or commissioners. This ambiguity creates legal uncertainty, as reflected in several cases where the court rejected dissolution petitions filed by shareholders on the grounds that the applications were premature. This situation demonstrates an inconsistency between the substantive article and its elucidation, as well as a potential imbalance in the rights of the parties within the company to prove the company's inactive status.

According to Supreme Court Decision No. 1618 K/Pdt/2016, one of the requirements for filing a petition for the dissolution of a Limited Liability Company is notifying the Tax Office that the company has been inactive for at least three (3) years, and such notification must be made by the Board of Directors (Kurniawan, 2022, pp. 69–79). One example illustrating legal uncertainty in company dissolution is the case between PT Baraventura Pratama (BVP) and PT Artha Komoditi& Energi Services (AKES). PT BVP, which owned 50% of PT AKES shares, filed a petition for dissolution with the Central Jakarta District Court (Case No. 176/Pdt.P/2015/PN.Jkt.Pst). However, the petition was rejected because the company's non-active notification letter to the tax authority was submitted by the shareholder rather than the Board of Directors. The court ruled that only the Board of Directors was authorized to submit the notification, as it is the organ fully responsible for the management of the company. This decision was upheld by the Supreme Court through Decision No. 1618 K/Pdt/2016. PT BVP argued that the elucidation of Article 146 paragraph (1)(c) of the Company Law should not be interpreted exclusively as granting such authority only to the Board of Directors, as this would contradict the main provision of the article, which expressly provides that shareholders, directors, and commissioners all have the right to file a petition for dissolution (Kurniawan, 2022, p. 71).

If a Limited Liability Company has not been operating for approximately three years, both the Board of Directors and shareholders have the right to file for dissolution through the court. A common reason for seeking dissolution via the court is the company's inactivity and imbalance in share ownership. Article 146

paragraph (1) of the Company Law grants both the Board of Directors and shareholders the right to file for dissolution. However, there remains a difference in interpretation regarding which corporate organ has the authority to send the notification letter to the tax authority about the company's inactivity for three years or more. In the case above, the court deemed the petition premature because the notification to the tax authority was submitted by a shareholder (Sihotang, 2023, pp. 500–510).

The elucidation of Article 146 paragraph (1)(c)(a) of the Company Law states that one of the reasons a company cannot continue its operations is if it has not conducted business activities for three years or more, as evidenced by a notification to the tax authority. The phrase *"among others"* indicates that any one of the stated reasons may suffice to support a petition for dissolution. However, the elucidation creates legal uncertainty by failing to specify who is authorized to submit the notification. This contradicts Article 146 paragraph (1)(c) of the Company Law, which grants shareholders, directors, and commissioners equal rights to file for dissolution. Consequently, this elucidation risks diminishing the normative force of the main provision by restricting that right to a single organ, thereby contravening the principle of legal certainty guaranteed by the 1945 Constitution.To analyze the normative conflict between Article 146 paragraph (1)(c) of the Company Law and its elucidation, the author employs grammatical and systematic interpretation methods. Grammatical interpretation involves interpreting the wording of the article according to linguistic rules, while systematic interpretation involves understanding the article within the broader context of the Company Law and its underlying legal principles. According to Sudikno Mertokusumo, legal discovery methods consist of three approaches—interpretation, argumentation, and exposition (or legal construction)—all of which aim to uncover the true meaning of the law in accordance with the spirit and purpose of legislation (Mertokusumo, 2007, p. 56).

A grammatical interpretation of Article 146 paragraph (1)(c) of the Company Law reveals that while the article provides the legal foundation for company dissolution, it contains ambiguity and potential for subjective interpretation. The phrase *"among others"* and the lack of clarity regarding who is authorized to prove the company's non-active status create a loophole that may be exploited. The article states that a petition for dissolution may be submitted by shareholders, the Board of Directors, or the Board of Commissioners if the company cannot continue its operations. The conjunction *"or"* in this context signifies that each organ has an equal right to file such a petition in court. According to the *Kamus Besar Bahasa Indonesia* (KBBI), the word *"or"* denotes a choice among several options, implying that any of the listed parties may act.Beyond grammatical interpretation, the author also examines the issue through *systematic interpretation*. Systematic interpretation refers to interpreting a legal provision within the context of the broader legal framework (*systematische interpretative*). It may also involve comparing related legal texts governing the same subject matter. For example, when interpreting an article of a statute, relevant provisions or underlying principles in other laws must be taken into consideration (Utrecht, 1983, pp. 212–213).Systematic or logical interpretation emphasizes understanding a legal article within the entire legal system rather than in isolation. It considers interrelationships among provisions within a statute, as well as with other relevant laws and general legal principles. In the case of Article 146 paragraph (1)(c) of the Company Law, a systematic approach is essential to address the uncertainty arising from its elucidation. The article grants shareholders, directors, and commissioners the right to request the dissolution of a company that can no longer continue its business. The elucidation, however, cites one example of such a condition—company inactivity for three years or more, evidenced by a notification to the tax authority. Yet, the phrase *"among others"* raises the question of whether the reasons are exhaustive or illustrative, creating interpretative flexibility that can undermine legal certainty.

Furthermore, Article 114 of the Company Law regulates shareholders' rights to obtain information about the company. If shareholders have evidence that the company has been inactive for three years or more, they are entitled to request the Board of Directors to provide clarification and take appropriate actions, including filing for dissolution. A systematic or logical interpretation requires that this shareholder right be respected and protected so that shareholders are not disadvantaged by directors' lack of transparency or accountability (Rajagukguk, 2008, p. 95).A systematic interpretation of Article 146 paragraph (1)(c) of the Company Law must also consider the underlying principles of *Good Corporate Governance* (GCG), which emphasize transparency, accountability, and responsibility in company management. Therefore, any decision to dissolve a company should be made transparently and accountably, involving all relevant parties—shareholders, directors, and commissioners—while ensuring fair consideration of their respective interests.The interpretation of Article 146 paragraph (1)(c) should thus be broadened and not confined to the examples in its elucidation. The phrase *"the company can no longer continue its operations"* may encompass various factors beyond the company's inactivity for three years, as long as such factors can be substantiated and are consistent with prevailing legal principles. Moreover, this interpretation reaffirms that all interested parties have the right to file for dissolution, and such decisions must be made with due regard to fairness and the protection of all stakeholders' rights.

Legal Certainty in the Dissolution of a Limited Liability Company in Court Based on Applications by Shareholders, Directors, or Commissioners

The dissolution of a Limited Liability Company (PT) through the court is a mechanism regulated under Law Number 40 of 2007 concerning Limited Liability Companies (Company Law). Article 146 paragraph (1) of the Company Law states that a district court may dissolve a company upon the application of shareholders, directors, or the board of commissioners on the grounds that the company can no longer continue its business. This provision is intended to provide a clear legal standing for these three organs in submitting a petition for the dissolution of the PT to the court.Shareholders have the right to file for the dissolution of a PT if there are strong grounds to believe that the company's continuation is no longer viable. For example, in situations where share ownership is evenly split, causing the General Meeting of Shareholders (GMS) to be unable to reach valid decisions—such as when two shareholder factions each own 50% of the shares. In such circumstances, shareholders may file a dissolution petition to the court in order to obtain legal certainty. (Hapsari, 2021, p.2)

Legal certainty in the judicial dissolution of a PT is crucial for all parties involved, including shareholders, directors, and the board of commissioners. A clear and transparent dissolution process will ensure that the rights and obligations of each corporate organ are protected in accordance with the prevailing laws and regulations. Therefore, a deep understanding of the procedures and legal basis for company dissolution becomes essential for stakeholders in operating and managing the company.Normatively, legal certainty refers to regulations that are drafted and enacted in a definitive manner because they are explicitly and logically structured. This means the law should not create ambiguity (multiple interpretations) and should be logically coherent, forming a system of legal norms that aligns with other norms. Hence, it does not conflict with or cause issues or normative clashes. Legal certainty refers to the application of law that is clear, consistent, and consequently implemented, without being influenced by subjective circumstances. Certainty and justice are not merely moral demands but are factual characteristics of law. A law that lacks certainty and fairness is not merely poor law—it ceases to be law at all. (Kamsil, 2009, p.17)

4. CONCLUSION

The regulation of the dissolution of a Limited Liability Company (PT) based on Law Number 40 of 2007 concerning Limited Liability Companies (Company

Law) is stipulated in Articles 142 to 152 of the Company Law. Dissolution may occur due to a resolution of the General Meeting of Shareholders (GMS), the expiration of the company's term, a court decision, or the revocation of the business license. Specifically, Article 146 paragraph (1) letter (c) of the Company Law regulates the dissolution of a company by a court decision. In particular, letter (c) grants authority to shareholders, directors, or the board of commissioners to file a petition for the company's dissolution with the district court if the company is deemed no longer viable.

This mechanism is intended to provide legal certainty for shareholders and other related parties. However, in practice, there are often obstacles in its implementation, especially when there are conflicting interests among the company organs. Furthermore, the absence of a clear definition regarding the criteria for such dissolution within the main text of the Company Law or its implementing regulations has led to varying interpretations among legal practitioners and the courts, thereby creating legal uncertainty.

The provisions on the dissolution of a Limited Liability Company under Law Number 40 of 2007 are covered in Articles 142 to 152, with Article 146 paragraph (1) letter (c) in particular affirming that shareholders should have the same legal standing as the directors and the board of commissioners in terms of authority to file for dissolution in court.

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