



Criminal Liability of Directors of Limited Liability Companies Sentenced to Bankruptcy for Bankruptcy Boedel Embezzlement

Setyo Nugroho Haribowo^{1*}, Hermawan²

¹ Universitas Sunan Giri Surabaya Jl. Brigjen Katamso II, Waru, Sidoarjo, Indonesia | email: setyoharibowo@gmail.com

² Universitas Sunan Giri Surabaya Jl. Brigjen Katamso II, Waru, Sidoarjo, Indonesia | email: hermawan.dharma.adji@gmail.com

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ABSTRACT

Limited Liability Company is a legal entity. With its status as a legal entity, it means that the company is a legal subject capable of supporting its rights and obligations as with a person and has its own assets separate from the assets of its founders, shareholders and administrators, since the court pronounces the bankruptcy decision in an open session. For the general public, the debtor has the result that he loses the right to manage and control his assets (persona standy in ludicio) and the bankrupt's rights and obligations are transferred to the curator to manage and control his assets in accordance with the Bankruptcy Law. In principle, directors are fully responsible for running the company and directors are personally responsible if they violate the authority determined by law or the articles of association. ultra virres is when the action taken is beyond the company's capacity as stated in the company's aims and objectives as stated in the Articles of Association. The principle of fiduciary duty applies to company directors in carrying out their duties both in carrying out their functions as management, namely in leading the company and as representation, namely representing the company inside and outside the court. Directors are fully responsible for running the company and directors are personally responsible if they violate the authority determined by law or the Articles of Association. In the event that a Limited Liability Company is sentenced to bankruptcy, the Directors of the Limited Liability Company may not transfer its bankruptcy certificate, if this happens, the Directors of the Limited Liability Company may be subject to the crime of embezzlement.

Corresponding Author:

Setyo Nugroho Haribowo

Universitas Sunan Giri Surabaya Jl. Brigjen Katamso II, Waru, Sidoarjo, Indonesia

*Email: setyoharibowo@gmail.com

1. INTRODUCTION

Laws are rules that a country establishes to limit the behavior of its citizens in order to achieve security and peace in the country. Law is a product that is important to understand and implement. Understanding the law is one way to create a conducive atmosphere in a country. This is what encourages the birth of science that discusses legal issues and becomes an introduction for citizens to study law, both law in their country and law that applies universally.

Norms contain what is expected and what is not expected. Behind norms are values which are defined as measures that a society realizes or is not aware of to determine what is right or good. Every society wants these norms to be obeyed (das sollen), even though in reality not everyone obeys them (das sein). In order to comply with these norms, society imposes sanctions, both positive and negative sanctions. One form of norm is a legal norm. Legal norms have the characteristic that they can be enforced. These legal norms are then formulated in the form of legal regulations, which include criminal law, civil law, and others. Therefore, every article in the legal regulations is based on the existence of norms and values that exist in society.

Regulations regarding limited liability companies were initially regulated in Law Number 1 of 1995 concerning Limited Liability Companies. The formation of special regulations regarding companies is due to being able to protect the interests of shareholders and creditors, as well as other related parties as well as the interests of the company itself, whereas in the Commercial Code the position of companies is still narrow, and is not in accordance with the increasingly rapid development of the economy and the business world and only creates legal entity in a company that is a legal entity, and does not include any protection for shareholders.

Law Number 40 of 2007 concerning limited liability companies has been adapted to various developments that have occurred in business activities in the form of adding new provisions, improving, perfecting or maintaining the provisions contained in Law No. 1 of 1995 which is considered still relevant to the current situation (1). The increasingly rapid development of companies makes business competition between companies increasingly tight. Companies must be able to maintain the existence of their company. For this reason, companies must carry out strategies so that their companies survive and develop. The company structuring process carried out can take the form of merger, consolidation and takeover. Mergers, consolidations and acquisitions are a form of strategy that is usually carried out by business people to restructure the company, expand the company, or to comply with statutory provisions. This is regulated in the 2007 Limited Liability Company Law.

Bankruptcy is a situation that causes a person or legal entity to become incompetent in carrying out legal actions. Historically, in 1934 bankruptcy could only be intended for traders, but as times change and developments in the economic sector, bankruptcy is not only experienced by traders but also by companies that have debts and are in a state of insolvency.

Unlawful Acts (*onrechtmatige daad*) in the civil context are regulated in Article 1365 of the Civil Code or *Burgerlijk Wetboek* ("BW"), in Book III BW in the section on agreements created by law which reads: "Every An unlawful act that brings harm to another person requires the person whose fault it was to cause the loss to compensate for the loss."

In the Bankruptcy Law, we can see forms of unlawful acts by debtors in articles 41-49 of Law No. 37 of 2004 and unlawful acts by debtors are not only based on article 1365 of the Civil Code but are also violations in The law includes grants as well as all forms of unlawful acts by debtors which result in losses to creditors.

The definition of criminal law in an objective sense or what is called *ius poenale* is criminal law seen from the aspect of prohibitions on actions, namely prohibitions accompanied by criminal threats for anyone who violates the prohibition. So the definition of criminal law in an objective sense has the same meaning as the meaning of material and formal criminal law. As formulated by Hazewinkel Suringan, *ius poenale* is a number of legal regulations containing prohibitions and orders or obligations whose violations are punishable by criminal penalties for the violators.

Criminal Code sanctions that will be applied to debtors who commit unlawful acts, namely the debtor collaborating with a third party in order to embezzle assets that will become a bankruptcy case. Embezzlement can be carried out by changing the name of the asset owner to his family/close friends or trusted people of the debtor, so that the assets do not become bankruptcy assets.

2. RESULTS AND DISCUSSION

2.1 Limited Liability Company as a Legal Subject

A limited liability company is a legal subject that is the holder of the rights and obligations of an object or property, where the wealth comes from an individual's assets which are deemed worthy of being maintained (2). As a legal subject, a limited liability company acts like an individual because it can carry out its own legal actions, can sue and be sued in its own name before the court, and has its own assets that are separate from its shareholders. In the legal system in Indonesia, company law is not the most important law, because there are still other legal points that relate to company law, namely regarding partnerships and associations, all of which are regulated in the Civil Code. Apart from partnerships and associations, there are also firms and limited partnerships which are regulated in the Commercial Code (3).

If we pay attention to the existing definition of an agreement, namely that it is a legal act to bind ourselves to each other with the aim of producing certain mutually desired legal consequences, then it is clear here that a company can be founded by more than two people or at least there must be two parties to bind themselves to each other. Specifically in establishing a limited liability company, previously regulated in the KUHD did not specify how many people must be present in establishing a limited liability company, but so that there is a legal relationship and is linked to the meaning of the agreement, it can be concluded that a limited liability company can be established by a minimum of two people (4).

UU no. 40 of 2007 concerning limited liability companies has been adapted to various developments that occur in business activities in the form of adding new provisions, improving, perfecting or maintaining the provisions in Law no. 1 of 1995 which is considered still relevant to the current situation (5).

Apart from being a capital partnership with a legal entity, a limited liability company is also a place where the parties collaborate, namely entering into a contractual relationship. This collaboration creates a legal entity that is deliberately created, namely the company as an "artificial person". In business activities, in general this form of business entity is very popular and well known, due to several considerations, namely: 1) There is limited liability to shareholders. 2) There is a mobility characteristic of participation, meaning that there is the possibility of movement or change in participation. 3) There is management through company organs.

According to Soedjono Dirjosisworo, a Limited Liability Company or PT is a legal entity established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and meets the requirements stipulated in Law no. 40 of 2007 as amended with its implementing regulations (6).

Limited Liability Companies have several organs, namely the GMS, Board of Directors and Board of Commissioners. A Limited Liability Company as an independent legal subject is an artificial person, something that is not real or unreal. So a Limited Liability Company cannot act alone. To be able to act within the law, a Limited Liability Company is run by organs that will act on behalf of the Limited Liability Company which requires a Board of Directors as its representative. It can be said that a limited liability company cannot function in carrying out its rights and obligations without the assistance of the Board of Directors (7).

Regarding unlawful acts, corporations or companies as legal subjects can commit unlawful acts, both civil and criminal (civil and criminal wrongs). In general, management must be responsible for unlawful acts. However, unlawful acts can be carried out directly by the company through its organs, or conversely the unlawful acts are carried out by company employees and the company must be held responsible for them.

2.2 Overview of Bankruptcy Law

Bankruptcy is a situation where the debtor has financial difficulties to pay his debts to creditors. In bankruptcy law, a debtor can be declared bankrupt if the debtor is insolvent or unable to pay for certain reasons, either due to an economic crisis or a financial crisis experienced by the debtor to pay all debts the debt, then in this situation the interests of creditors as a whole must be protected.

One of the important stages in the bankruptcy process is the Insolvency stage. If the debtor has been declared insolvent, then the debtor is truly bankrupt, and his assets will immediately be divided, although this does not mean that the business of the bankrupt company cannot continue.

Insolvency in general is the condition of a company where its assets are smaller than its liabilities. In other words, the company's debt is greater than the company's assets. If this happens, it is usually referred to as technical insolvency. Stopping payments must be an objective situation, namely because the debtor's financial condition has experienced inability (has been in a state of being unable) to pay his debts. In other words, the debtor must not simply be unwilling to pay his debts (not willing to repay his debts), but his objective financial situation is in a state of being unable to repay his debts.

To determine whether the debtor's financial condition is unable to pay its debts, or in other words the debtor is insolvent, it must be determined objectively and independently. This can only be done based on a financial audit or financial due diligence carried out by an independent public accounting firm. Then, according to Friedman, insolvency is the inability to fulfill financial obligations when they fall due, as in business, or an excess of liabilities compared to assets within a certain time.

Meanwhile, in statutory regulations, the definition of insolvency can be found in the Elucidation of Article 57 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU which states that what is meant by "Insolvency" is a state of being unable to pay. However, the bankruptcy requirements regulated in Article 2 paragraph (1) of Law No. 37 of 2004 concerning bankruptcy and PKPU are sufficient if the debtor does not pay debts to just one creditor as long as the debtor in question has two or more creditors (has more than a creditor). It is not required that the debtor's finances must be in a state where they have stopped paying their debts or in other words the debtor's financial condition is insolvent.

The existence of bankruptcy institutions in the realm of Indonesian law aims to protect the interests of creditors who do not have the right to take precedence or are known as concurrent creditors from the privileges and collateral rights owned by preferred creditors as owners of special rights and separatist creditors as owners of collateral rights. Technically, the purpose of bankruptcy is to use the debtor's assets fairly and proportionally to pay all of the debtor's debts to creditors under the supervision of the Supervisory Judge (8).

M. Hadi Shubhan also emphasized that the implementation of bankruptcy institutions is better than other institutions because it must be carried out by referring to the principle of creditorium parity which requires each creditor to have the same position in receiving payments from the debtor's debt with the debtor's debt, and *pari passu prorata parte* which divides the debtor's assets. as a joint guarantee with the creditors proportionally or in accordance with the portion of each creditor's agreement and not divided equally among the existing creditors.

In the KPKPU Law, the meaning of debt is reaffirmed in the realm of Bankruptcy institutions and Postponement of Debt Payment Obligations based on the provisions of Article 1 point 6, Debt is an obligation that is expressed or can be stated in amounts of money in either Indonesian or foreign currency, either directly, or those that will arise at a later date or are contingent, which arise due to an agreement or law and which the debtor is obliged to fulfill and if not fulfilled gives the creditor the right to obtain fulfillment from the debtor's assets.

One of the significant legal consequences of bankruptcy is that the debtor loses his right to control and manage his assets based on Article 24 paragraph (1) UUKPKPU. The act of managing his assets was taken over by the curator based on the provisions of Article 16 paragraph (1) UUKPKPU. In other words, bankruptcy means the debtor cannot take any action with his assets, let alone continue his business activities. From the series of presentations regarding the resolution of problems between debtors and creditors, it can be understood that the process of resolution through bankruptcy tends to take a lot of time and is detrimental to creditors if the debtor is insolvent. For this reason, the laws and regulations regarding bankruptcy also include institutions for resolving debt problems between debtors and their creditors, but in a faster and more peaceful way. This institution is known as Postponement of Debt Payment Obligations.

Thus, even though Law Number 37 of 2004 has regulated things that can be done by debtors and/or administrators during the PKPU period, if the PKPU is not successful, the debtor will be in a state of bankruptcy. Likewise, in practice things can be found that are different from those regulated in Law Number 37 of 2004.

2.3 Crime of Embezzlement

The former Dutch WvS Criminal Code (KUHP) only provides the terms criminal offenses, namely *Strafbaar Feit* and *Delict*. These two terms are translated into Indonesian, as is known in the study of criminal law and statutory regulations with various terms, such as criminal acts, criminal acts, criminal incidents, acts that can be punished, things that are threatened with law, and acts that may be subject to law (9).

Moeljatno, uses the term criminal act, namely an act that is prohibited by a rule of law, a prohibition which is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition. Talking about criminal acts, it cannot be separated from the imposition of a penalty. Imposing a crime in the general sense of "in abstracto" constitutes a law that is based on the principle of legality, namely "the principle of *nullum delictum, nulla poena sine prarvia lege poenali*" as stated in Article 1 paragraph 1 of the Criminal Code, which means "no action can be punished, except based on the strength of the provisions of previously existing criminal legislation." Meanwhile, in the concrete sense "in concreto" concerns bodies or agencies consisting of people and tools that actually implement criminal regulations.

The definition of criminal law in an objective sense or what is called *ius poenale* is criminal law seen from the aspect of prohibitions on actions, namely prohibitions accompanied by criminal threats for anyone who violates the prohibition. So the definition of criminal law in an objective sense has the same meaning as the meaning of material and formal criminal law. As formulated by Hazewinkel Suringan, *ius poenale* is a number of legal regulations containing prohibitions and orders or obligations whose violations are punishable by criminal penalties for the violators.

The definition of criminal law in a subjective sense or what is called *ius poeniendi* as the subjective aspect of criminal law, is a rule that contains or concerns the rights or authority of the state: 1) To determine prohibitions in efforts to achieve public order; 2) To enforce (its coercive nature) criminal law which takes the form of imposing a penalty on the violator of the prohibition; and 3) To carry out criminal sanctions that have been imposed by the state on violators of the criminal law.

In the operation of criminal law, the provision of punishment or punishment in the concrete sense, namely when a criminal case occurs, is not the final goal. Crime is actually a mere means to realize the objectives of criminal law. The purpose of criminal law can be seen from Sudarto's view of the function of criminal law. The general function of criminal law is to regulate social life or implement community order. Meanwhile, the special function of criminal law is to protect legal interests from actions that would harm them by using sanctions in the form of criminal penalties that are sharper in nature than sanctions found in other areas of law.

Embezzlement is regulated in Book II of the Criminal Code concerning crimes against property, namely in the form of attacks on people's legal interests in the property they own, namely in Article 372, Article 373, Article 374, and Article 375. Article 376 concerns embezzlement between families, which applies the same with Article 367 of the Criminal Code (theft offense). Article 377 of the Criminal Code concerns additional penalties in the form of announcing the judge's decision and revocation of rights and can be imposed for evasion of Article 372, Article 374 and Article 375 of the Criminal Code.

Article 372 of the Criminal Code: "Any person who intentionally owns against the rights of an item which wholly or otherwise belongs to another person and the item is in his hands not because of a crime, shall be punished for embezzlement, with a maximum prison sentence of four years or a fine of up to the amount is Rp. 900,-

Embezzlement is “a crime that is almost the same as theft in Article 362 of the Criminal Code. The difference is that in the case of theft, the item that is owned is still not in the hands of the thief and must still be taken, ”whereas in embezzlement, when the item is owned, the item is already in the hands of the person who created it, not through crime.

2.4 Criminal Liability of Limited Liability Company Directors Against Boedel Bankruptcy Embezzlement

A limited liability company is a legal subject that is the holder of the rights and obligations of an object or property, where the wealth comes from the assets of an individual who are deemed worthy of being maintained. As a legal subject, a limited liability company acts like an individual because it can carry out its own legal actions, can sue and be sued in its own name before the court, and has its own assets that are separate from its shareholders. In the legal system in Indonesia, company law is not the most important law, because there are still other legal points that touch on company law, namely regarding Partnerships and Associations, all of which are regulated in the Civil Code. Apart from partnerships and associations, there are also firms and limited partnerships which are regulated in the Commercial Code.

The company's directors or management are the company's tools who carry out the company's activities and represent the company both inside and outside the court. The appointment of directors is carried out by the GMS, but for the first time the appointment is carried out by including the composition and names of the members of the board of directors in the deed of establishment. The duties of the directors are to manage the company as stated in the official explanation of Article 79 paragraph 1 of the Company Law which covers the day-to-day management of the company, however the law does not provide in detail what the management in question is. In Dutch law, day-to-day management actions are routine actions which are referred to as *daden van beheren*, but these tasks can be seen in the articles of association which generally revolve around: 1) Managing all affairs. 2) Control the company's assets. 3) Carrying out actions as intended in Article 1796 of the Criminal Code, namely: 4) Transferring mortgages for fixed assets. 5) Imposing a mortgage on fixed assets. 6) Carrying out other actions regarding property rights. 7) Represent the company inside and outside the court. 8) In the case of dealing with third parties, both jointly and individually have the right to represent the company regarding matters in the business field that is the company's objectives.

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In the second crime book, chapter XXVI of the Criminal Code, there are several provisions that specifically regulate the criminal responsibility of directors in connection with company bankruptcy. The articles that regulate this are:

Chapter 398 KUH Criminal

“A management or commissioner of PT. The Andil Indonesia airline or cooperative association which is declared bankrupt or for which a resolution has been ordered by the court, is threatened with imprisonment for a maximum of one year and six months: 1) If the person concerned helps or permits the commission of acts which are contrary to the articles of association, which causes all or most of the losses suffered by the company, airline or association. 2) If the person concerned, with the intention of postponing the bankruptcy or resolution of a company, airline or association, helps or permits the borrowing of money with burdensome conditions, even though he knows that bankruptcy or its resolution can no longer be prevented. 3) If the person concerned can be blamed for not fulfilling the obligations as stated in Article 6 of the first paragraph

of the KUHD and Article 27 (1) of the Ordinance on Indonesian Airline Shares, or that the books and letters containing notes and writings are kept According to the above article, it can be shown in an unaltered state.

Chapter 399 KUH Criminal

“A management or commissioner of PT. The Andil Indonesia airline or cooperative association which is declared bankrupt or whose settlement has been ordered by the court, is threatened with imprisonment for a maximum of 7 (seven) years if the person concerned fraudulently reduces the rights of receivables to the company, airline or association for: 1) Making non-existent expenses or not recording income or withdrawing items from the bundle. 2) Has transferred (vervreemden) something for free or clearly below its value. 3) In a way that benefits one of the debtors at the time of bankruptcy or settlement, or when he knows that the bankruptcy or settlement can no longer be prevented. 4) Not fulfilling his obligation to make records according to Article 6, first paragraph of the Commercial Code and Article 27 (1) of the Ordinance on Indonesian Sharing Airlines, and regarding keeping and displaying books, letters and writings according to those articles.

Chapter 400 KUHP

With a maximum prison sentence of five years and six months, anyone who reduces by fraud the rights of the person who owes the debt is punished: 1) In the case of handing over his property according to law, in the event of bankruptcy or in the case of settlement of business matters or if it can be previously suspected of wrongdoing. One thing will happen and then the day when the property is handed over, goes bankrupt or the settlement of business matters occurs, then he takes something from the property, or receives payment, either from receivables, which cannot yet be collected or from debts which can already be collected, in the aforementioned case, if it is known that the bankruptcy or settlement of the person's profitable business affairs has been demanded, or because of a consensus by the person who owes it; 2) When examining receivables in cases of handing over assets according to law, bankruptcy or business settlement matters, falsely explaining a collection that does not actually exist, or exaggerating the amount of receivables that actually exist. (Penal Code 35, 43, 397-1e, 399-1e, 405, 486).

Chapter 401 KUHP

A debt collector who likes to accept a court agreement offered because he has entered into an agreement with the person who owes the debt or with another person, with the claim of extraordinary profits, is punished, if the agreement is accepted, by imprisonment for a maximum of one year and four months;

In such cases, a similar penalty is also imposed on the person who owes the debt or, if the debtor is a company, airline, association or foundation, the management or assistant who made the agreement (KUHP 43, 405).

Chapter 402 KUHP

Anyone who is declared unable to pay his debts or if he is not a trader he will be declared bankrupt, or anyone who is permitted to hand over his property according to a court decision, shall be sentenced to a maximum imprisonment of five years and six months, if he defrauds someone of their rights. who owes him a debt by falsely fabricating a debt, or hiding a profit or running away with an item from his property, or transferring an item for nothing or actually below the price, or when he is declared incapable, gives up his property or is declared bankrupt or when He knew that one of these things could no longer be prevented from benefiting one of the people who owed him money in any way.

Chapter 520 KUHP

By imprisonment for a maximum of three months, the following shall be punished: 1) Anyone who has received deferral for the payment of his debts with his own authority carries out an act which, according to general law, must be carried out through the intermediary of the property administrator. 2) Managers or commissioners of companies, airlines, associations or bodies that have received a deferral for the payment of their debts, who with their own authority carry out actions, whereas according to the law this must be done through the intermediary of the property management.

From the provisions as intended in these articles, it can be concluded that both members of the PT's directors and commissioners can be criminally prosecuted if they have caused losses to the PT's creditors and can be subject to imprisonment for a maximum of 1 (one) year and 4 (four) months if they : 1) Participating in or giving approval to actions that violate the PT's articles of association and these actions result in serious losses resulting in the PT becoming bankrupt. 2) Participating in or giving approval for loans with burdensome conditions with the aim of delaying bankruptcy, or 3) Neglecting to maintain bookkeeping as required by the Company Law and the PT's articles of association.

Furthermore, both members of the board of directors and commissioners of a PT who have been declared bankrupt can be criminally prosecuted and subject to a maximum prison sentence of 7 (seven) if they manipulate expenditures/debts with the intention of fraudulently reducing the rights of the PT's creditors or transferring the PT's assets for free. only or at prices far below market.

With regard to the criminal liability mentioned above, it should be noted that former members of the board of directors and former commissioners of PT are not free from these threats. The acquittal and repayment (acquit et decharge) granted by the GMS may not cover criminal acts committed by members of

the directors and commissioners because this is not within the authority of the GMS.

Chapter 372 KUHP

Any person who intentionally and unlawfully owns something which wholly or partly belongs to another person but which is in his control not because of a crime is threatened with embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiah.

The provisions of Article 372 of the Criminal Code contain the following elements of the crime of embezzlement: 1) subjective element: intentionally; 2) objective elements: 3) unlawful control; 4) an object; 5) partly or wholly belongs to another person; 6) being in it is not because of evil.

The first element of Article 372 of the Criminal Code, namely "intentionally", is a subjective element. Deliberately related to the crime of embezzlement was explained further by Sianturi as follows: "The perpetrator realized that he was unlawfully in possession of something. Realizing that the item is partly or wholly owned by another person, as well as realizing that the item is with him or in his control, not because of a crime." So, intentionality in this criminal act of embezzlement includes intent as an intention, namely that the person who made it intended that there would be a prohibited consequence from his actions.

The second element of Article 372 of the Criminal Code is "unlawful control or possession." The meaning of unlawful possession is explained further as follows:

According to Supreme Court jurisprudence no. 69 K/Kr/1959 dated 11 August 1959 "to own means to control an object contrary to the nature of the rights owned or that object. Supreme Court Jurisprudence No. 83 K/Kr/1956 dated 8 May 1957, "possessing, namely controlling an item, is contrary to the nature of the rights a person exercises over those items.

So if the goods are under his control and not based on unlawful intent, then it cannot be said that he has committed an act of possessing an item unlawfully. The third element of Article 372 of the Criminal Code, namely "an object", according to Sugandhi is as follows:

What is meant by goods are all tangible objects such as money, clothes, jewelry and so on, including animals, and intangible objects such as electric current which is transmitted through wires and which is transmitted through pipes. Apart from objects that are worth money, theft of objects that are not worth money, as long as they conflict with the owner (against the law) can also be subject to this article.

Meanwhile, according to Sianturi: "The elements of goods are the same as goods in theft as stated in Article 362 of the Criminal Code. Basically, goods are something that has economic value at least for the owner." This means that the definition of goods is interpreted broadly, that is, it is not only limited to tangible objects, but also includes objects that are intangible, but have economic value, for example electricity, gas and others.

The fourth element of Article 372 of the Criminal Code is "partially or wholly belongs to another person", explained by Sianturi that: "The goods wholly or partly belong to another person, meaning not only that the ownership is based on applicable legislation, but also based on applicable law". The fifth element of Article 372 of the Criminal Code, namely "not being present because of a crime", is explained by Lamintang as: "indicating the existence of a real, direct relationship between the perpetrator and a certain object".

Article 374 of the Criminal Code stipulates that "Embezzlement committed by a person whose control over goods is due to a work relationship or because of a search or because he received wages for it, is punishable by a maximum imprisonment of 5 (five) years."

This crime is called "aggravated embezzlement". What can be prosecuted under this article are, for example: 1) A person who, because of his employment relationship, is entrusted with storing goods, which are then embezzled; for example: the relationship between the employer and the domestic servant or between the employer and the employee; 2) Someone who keeps the item because of his position; for example: a laundry man darkens the clothes that are washed to him, a shoemaker, a watchmaker or a bicycle repairman darkens shoes, watches or bicycles, which are handed over to him for repair; 3) Someone who holds the item because he gets a monetary reward; for example: a railway employee who pays for goods from a passenger by getting paid money, then embezzles the goods he is carrying.

Criminal liability is aimed at perpetrators of criminal acts who commit errors. Regarding errors which are one of the elements of liability, they can be committed intentionally or through negligence. Deliberation is a human act that has a mistake, there are two characteristics in carrying out this act, namely intentionality (*dolus*) and negligence (*culpa*). Actions carried out intentionally are actions that are desired and carried out with full awareness. According to Moeljatno, the form of intentionality consists of three features, namely: 1) intentionality with intent (*dolus derictus*); 2) intentionality as certainty, necessity, and 3) intentionality as possibility (*dolus eventualis*).

The perpetrator commits a criminal act, either intentionally or through negligence. Intentional, according to Moeljatno, stated the following: 1) Intentional as an intention, namely that the maker intended a prohibited consequence from his actions. 2) Deliberation as certainty, that is, the maker can only achieve the goal by carrying out other actions and these actions are also prohibited actions. 3) Deliberation as a possibility, that is, the maker is aware of the possibility of another criminal act occurring, but does not prevent the maker's intention to carry out the act.

In relation to intentionality as an act that is against the law, a distinction is made between the formal nature of the law and the material nature of the law. The nature of going against formal law, if the action has complied with the prohibition of the law, then there is a mistake. The position of unlawful acts is obvious, from the nature of violating the provisions of the law, unless it includes exceptions that have been determined by law as well. For them, going against the law means going against the law, because the law is the law. Meanwhile, the material nature of unlawfulness argues that it is not certain that all actions that comply with statutory prohibitions are unlawful. For them, what is called law is not just laws, besides laws (written laws) there are also unwritten laws, namely norms or realities that apply in society.

Basically, before declaring bankruptcy, the debtor's rights to take all legal actions regarding his assets must be respected. Of course, by paying attention to the debtor's contractual rights and obligations according to statutory regulations. Since the court pronounces a bankruptcy decision in a hearing that is open to the public, the debtor has the effect that he loses the right to manage and control his property (*persona standy in ludicio*) and the bankrupt's rights and obligations are transferred to the curator to manage and control his assets. In the event that a Limited Liability Company is sentenced to bankruptcy, the Directors of the Limited Liability Company may not transfer its bankruptcy certificate, if this happens, the Directors of the Limited Liability Company may be subject to the crime of embezzlement.

3. CONCLUSION

Article 1 paragraph (1) of the Company Law confirms that a limited liability company is a legal entity. With its status as a legal entity, it means that the company is a legal subject capable of supporting its rights and obligations as with a person and has its own assets separate from the assets of its founders, shareholders and administrators, since the court pronounces the bankruptcy decision in an open session. For the general public, the debtor has the result that he loses the right to manage and control his assets (*persona standy in ludicio*) and the bankrupt's rights and obligations are transferred to the curator to manage and control his assets in accordance with the Bankruptcy Law.

Directors are fully responsible for running the company and directors are personally responsible if they violate the authority determined by law or the articles of association. In the event that a Limited Liability Company is sentenced to bankruptcy, the Directors of the Limited Liability Company may not transfer its bankruptcy certificate, if this happens, the Directors of the Limited Liability Company may be subject to the crime of embezzlement. Directors of Limited Liability Companies as legal subjects must understand the rules relating to applicable law in Indonesia, especially regarding the Limited Liability Company Law as well as the bankruptcy law and Postponement of Debt Payment Obligations. The Commercial Court and the parties in the Bankruptcy process must be professional in carrying out their main functions and duties, so that there are no errors in the application of applicable law.

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