The International Journal of Social Sciences and Humanities Invention 4(10): 4024-4032, 2017
DOI: 10.18535/ijsshi/v4i10.03 **ICV 2015: 45.28**
ISSN: 2349-2031

Research Article

Ideal Reconstruction of Liquidation of Limited Liability Company through National Court Decision Based on Justice Value

Sudar1, Gunarto[2], Anis Mashdurohatun[3],Wahyu Widodo[4]

Faculty of Law, Universitas Sultan Agung Semarang

Abstract: Limited Liability Company as one of business entities in the economic activities requires a clear and capable arrangement to keep up with the rapid progress, especially in the advancement of science and technology in Indonesia in both nationally and internationally.

Limited Liability Company is a legal entity in which is an alliance of capital, established under the agreement, engaged in business activities with a capital base which is wholly subdivided into shares and meets the requirements stipulated in the law and its implementing regulations. The provision carries with it the legal consequence that the limited liability company (hereinafter referred to in this article as the Company) has its own rights, obligations and assets separated from the rights, obligations and assets of its founders or shareholders.

Based from this, the authors are interested to conduct research on: "Ideal Reconstruction of Liquidation of Limited Liability Company Through National Court Decision Based on Justice Value"

this research in which are done based on juridical / normative research method shows that the reconstruction of a limited liability company through the establishment of a national court decision based on the value of justice as it is known that in the procedural law there are two way of processing the cases known as "Contentious Procesrecht" or law of dispute and "Non-Contentious Procesrecht" or the law of non-dispute. Against "Contentious Procesrecht" commonly used letters of lawsuit to resolve disputes of the parties through the "Judge Judgment". In contrast to the "Non-Contentious Procesrecht" commonly used application letter to request "Determination of Judges". Based on "Contentious Procesrecht", also apply the principle of "Audi Et Alteram Partem" (listening to both parties). This principle postulates that in the proceedings of proceedings at court, the parties to the dispute to defend their rights and interests respectively. In other words, the parties should be treated equally, fairly and impartially. Meanwhile, if based on "Non-Contentious Procesrecht" then the process applied the principle of "Voluntair"; a request to decide case to court without any dispute with other party (without disputes or differences with another party). So according to the authors what is the question of the applicant based on the legal principle of "Non-Contentious Procesrecht" is not in touch with the issue of rights and interests of others.

Keywords: Liquidation, Limited Liability Company, National Court.

INTRODUCTION

Limited Liability Company as one of the business entity in Indonesia's economic activity needs a clear arrangement and able to follow the progress of this rapid progress, especially in the progress of science and technology both in national and international scope.

The existence and role of the Limited Liability Company in the society of its development is very rapid, the existence and contribution of the Limited Liability Company as the business actor in society is as big as the existence of the society itself to the company. Limited Liability Company as a legal institution is a form of business entity most often found in Indonesian's community.

systematically limited liability is a very important factor as a bait pushing the public willingness to invest in Limited Liability Company.[1] where the characteristics are as follows :

a. The first characteristic is meant with limited liability here in the sense that there is a debt or loss, the debt will be paid from the wealth of the Limited Liability Company, and for those who invest the Limited Liability Company (shareholders) will not bear more debt losses than deposited / restricted property in Limited Liability Company hence the mean of "Limited" from the word means the limited liability of Investor, Limited liability is very important because it act as an incentive so that the capital owners willing to invest in the Company and can also predict in advance on how much the maximum risk of losses that may be suffered / in the responsibility of the capital will raise large capital from the community so that there is difficulty if the shareholders are responsible to the wealth of private property of shareholders except those determined in the Banking Act.

[1] Abdul Hakim Muhammad. *Hukum Perusahaan Indonesia, Perseroan Terbatas, Aditya Bakti, Bandung, 2000,*p.15 .

b. The second characteristic is the nature of mobility over the inclusion of this character of the investor. It is clear that within the Limited Liability Company the mobility of capital participation is enormous, the Law and the articles of association of the Limited Liability Company can accommodate the share share clearly either sold or replaced by the heirs due to death world.
c. The third characteristic that investors in a Limited Liability Company can know clearly that the Limited Liability Company is administered by an organ, meaning that shareholders may not manage it, but by a separate institution separate from its shareholders. There are three (3) internal organs in the Limited Liability Company which each have their own duties and authorities, namely General Meeting of Shareholders (AGMS), Board of Directors, Commissioners, as stipulated in Article (1) paragraph 2 of Law No.40 of 2007)[2].

The form of Limited Liability Company business as an economic enterprise has greater ability to develop themselves better than others, because :

a. Limited Company may collect substantial funds compared with other business forms.
b. Limited Company can have the ability to grow rapidly.
c. Limited Company can be designed to be able to hold long-term anticipation on large scale business both local and international level.
d. Limited Liability Company can work together by maintaining whoever it is as its supporters (shareholders).[3]

Limited Liability Company as one of the business entities in economic activities, requires a regulation that is able to keep up with the times since the progress of science and technology is growing rapidly.

Limited Liability Company as a business entity formerly regulated in Book I of Section III of the Commercial Law Code (Wetboek Van Koop Handle Voon Nederlandsch Indie) from Articles 36 to 56, is very brief and simple, so it can not follow / answer the challenges of time / development a time that developed so rapidly.[4]

The form of this business entity according to the Code of Commercial Law (KUHD) named Naam Loze Veennotschap (abbreviated as NV) which means a partnership that does not use the common name of its company, after the independence of Indonesia, it was then replaced with the name of Limited Liability Company, in which the term are chosen for limiting shareholder liability. [5]

In addition, there is still a legal form of Limited Liability Company under the name of "Maskapai Andil Indonesia" (MAI) as stipulated in Ordonantie Op Indonesichc Maatschappij Ordinance Indonesia Staatblad 1939: 569 Juneto 717. In order to answer this challenge, the government release Law No. 1 of 1995 concerning Limited Liability Company. The reason for this replacement under the Limited Liability Company Law are based from consideration, as follows :

a. The provisions stipulated in the KUHD are deemed to be inconsistent with the regulations of Limited Liability Companies. what are specified in the KUHD is no longer in line with the rapidly growing economic and business world, both nationally and internationally.
b. Whereas in addition to the legal entity form of Limited Liability Company as stipulated in the KUHD, until now there are other legal entities in the form of MAI, as stipulated in Ordinantie Op de Indonesichc Maatschappij Op Aandeleelen Staatsblad 1939: 569 yo 717.
c. Whereas in order to create a unity of law, in order to meet the needs of a new law which can further spur national development, as well as to ensure the certainty and enforcement of the law, the regulatory dualism as referred to in letter b needs to be discontinued by updating the regulations on Limited Liability Company.
d. Whereas the renewal of the regulation concerning Limited Liability Company as referred to in letter c shall be the embodiment of the principle of kinship based on the basic of economic democracy based on Pancasila and the 1945 Constitution.
e. Whereas based on the considerations as meant in letters a, b, c and d it is deemed necessary to establish a Law on Limited Liability Companies..

In addition to the preamble put forward, the general explanation also formulated additional things as follows :

a. The general targets of development, among others, are directed to the improvement of people's prosperity.
b. To achieve these targets, supporting facilities such as legal order that can encourage and control various development activities in the field of economy.[6]

As time progresses, Law No. 1 of 1995 concerning Limited Liability Company is replaced by Law No.40 of 2007 and the reason for the reimbursement of Limited Liability Company Law as stated in the Consideration for the Law of Limited Liability Company No.40 Year 2007 namely :[7]

a. That the economy is organized based on economic democracy with the principle of togetherness, efficiency of sustainable justice, environmentally friendly, independence, and by maintaining the balance of progress and national economic unity should be supported by a strong economic institution in order to realize the welfare of society.

[2] *Ibid,*hlm, 13- 15 .
[3] Sri Rejeki Hartono, *Beberapa Aspek Pemodalan Pada Perseroan Terbatas, Indo Pres, Semarang,2000,* hlm 7.
[4] Sri Rejeki Hartono, *Bentuk-Bentuk Kerjasama Dalam Dunia Niaga, Untag Pres, Semarang, 2000,* hlm6.
[5] *Kitab Undang Undang Hukum Dagang (KUHD)*
[6] M. Yahya Harahap, *Hukum Perseroan Terbatas, Sinar Grafika,Jakarta, 2009,* p. 24.
[7] Habib Adjie, *Status Badan Hukum, Prinsip-Prinsip dan Tanggung Jawab Sosial Perseroan Terbatas, CV.Mandar Maju, Bandung, 2008*, p.. 7.

b. That in order to further enhance the development of the national economy which also provides a solid foundation for the business world in the face of economic developments in the era of globalization in the future, need to be supported by a Law regulating the Limited Liability Company that can ensure the conducive business climate.
c. Whereas Limited Liability Company as one of the pillars of national economic development needs to be given legal basis to further spur national development arranged as joint effort based on kinship principle.
d. Whereas Law No. 1 of 1995 concerning Limited Liability Companies is no longer in line with the development of law and public needs, so it needs to be replaced by a new law.
e. Whereas based on the considerations as referred to in letter a, letter b, letter c and letter d, it is necessary to form a Limited Liability Company Law.

Furthermore, in the explanation of Law No.40 of 2007 it is affirmed that :

a. In the development of the provisions of Law No.1 Year 1995 are considered no longer meet the development of law and the needs of society because of economic conditions and progress of science, technology and information that has developed so rapidly, especially in the era of globalization.
b. Increase of public demand for fast service, and legal certainty.
c. Demands for the development of the business world in accordance with good corporate governance principles (Good Corporate Governance).

With the perspective as mentioned above, it is expected that the Company Law is accommodative, facilitative and anticipatory and prescriptive. [8] to encourage various forms of economic activity and to foster the fields of business that are interconnected with other fields. Limited Liability Company is a legal entity in which is a partnership of capital established under the agreement and do business with a capital base that its entire capital are divided into shares. [9] The Limited Liability Company Law does not limit the term of office of the board of directors of the company, the Limited Liability Company Law only determines that members of the board of directors are appointed for a specified period and may be reappointed.[10] The Board of Directors of limited liability company (abbreviated as PT or "Perseroan terbatas") consists of 1 (one) member of the Board of Directors or more, [11] *the Shareholder is the organ of the PT who has the authority not given to the Board of Directors or the Board of Commissioners. if the board of directors consists of 2 (two) members of the board of directors or more, the division of duties and authority of management among members of the board of directors shall be determined by the resolution of the GMS, in the event that the General Meeting of Shareholders does not stipulate the division of duties and authority of the members of the board of directors which shall determine the division's duties and authority*.[12] It is therefore are imperative to control the behavior of the Directors who have great positions and powers in managing the company, including setting standards of conduct to protect those who will be harmed if the Director behaves inappropriately using their authority or dishonest behavior.[13]

The ownership of a legal entity over a particular asset is substantially derived from the proceeds of wealth separated from a specific individual person, designated for the purpose and intent of that legal entity. In Article 7 paragraph (2) UUPT mentioned there are three organs, namely :

a. General Meeting of Shareholders (GMS).
b. Board of Directors.
c. Board of Commissioners.

The purpose of the District Court is to examine the Limited Liability Company to obtain data or information in the event if there is a suspicion that the Limited Liability Company has committed an unlawful act and / or directors or commissioner commits acts that harm the company, shareholders and / or third parties.[14]

The legal consequences of Limited Liability Company in the field as a business entity, then all the deeds of the body, the profits derived as the rights and property of the body itself, and vice versa if there is a loss then the body that bear it. Individual human persons who are separated from the Limited Liability Company except the Limited Liability Company in the banking world "Personal Standi in Judicio", Latin phrases used to describe the status of independence of the Limited Liability Company.[15] With the enactment of Law No.40 of 2007 on Limited Liability Company, the life and practice of business law in Indonesia progresses further.

Besides, it does not mean also the Law of Limited Liability Company has been extraordinary as the work of the nation's children without any weaknesses. Weaknesses and deficiencies clearly exist, then the Court is through its jurisprudence or rules of implementation can cover the weaknesses and holes are of course very much expected by all of us.[16]

PT was Born from the will of the founders to jointly form a

[8] *Ibid,* p. 3
[9] *Undang Undang No.40 Tahun 2007, opcit, p.6*
[10] Undang Undang Perseroan Terbatas No 40 Tahun 2007 Pasal 1 butir4
[11] Simon Fisher , Corporation Law (Australia : Butterworths, 2001) , hlm 102.
[12] Pasal 1 ayat (4) .Undang Undang No 40 Tahun 2007. *Rapat Umum*
[13] Karl R. Popper, *Masyarakat Terbuka dan Musuh-Musuhnya (The Open Society and Its Enemy)*, diterjemahkan oleh Uzair Fauzan, Cetakan 1, *Pustaka Pelajar,* Yogyakarta 2002, p.110.
[14] *Undang Undang No.40 Tahun 2007, Ibid, p.8*
[15] Sri Rejeki Hartono, *Bentuk-bentuk Kerja sama Dalam Dunia Niaga, Untag Pres,Semarang, 2000, h*
[16] Munir Fuady, Hukum Bisnis Dalam Teori dan Bentuk Praktek, Penerbit Citra Aditya Bhakti Bandung

PT. But at one time they can take the decision to no longer continue the PT they founded to the last and this is what is meant by berakirnya PT.

Law no. 40 of 2007 concerning PT has arranged a provision concerning the dissolution of PT namely:

a. Based on the General meeting of shareholders (GMS) decision
b. Because the period of time set forth in the articles of association has expired
c. Based on court decisions
d. With the revocation of bankruptcy based on a commercial court decision that has had permanent legal force, the Company's bankruptcy property is not sufficient to pay the cost of bankruptcy
e. Since the Company's declared treasury is in an insolvency state as stipulated in the Law on Bankruptcy and Suspension of Payment Obligations or
f. Due to the revocation of the company's business license, the Company requires the Company to liquidate in accordance with the legal provisions

Based on the above description, then the authors generalize main problem that will be discussed in this article as follows :

a. How is the implementation of the Liquidation of Limited Liability Company Through National Court Decision ?
b. What is the negative impact of the liquidation of the Limited Liability Company through the National Court decision ?
c. How to reconstruct the Liquidation of Limited Liability Company Through National Court Decision based on the value of justice ?

Research Result and Discussion

1. Implementation ofLimited Liability Company Liquidation Through National Court Decision

The liquidation of PT pursuant to court decision is classified as liquidation through judicial process. Limited Liability Company Law Set the subject of who can apply for the dissolution of PT. The parties are :

1. Prosecutor Bodies

The role of the prosecutor in the application for the determination of the dissolution of the PT to the court is for the public interest, not the complaint of one of the shareholders or certain parties. The petition of the Prosecutor may be brought to court should be on the grounds that it violates the public interest or the PT enforces regulations that violate the laws and regulations. What are the purposes of public interest and violate the laws and regulations here ?. Indeed in the Company Law does not provide explanation about it, although it can be taken one example that occurs today. Today many companies in the form of PT who commit acts violating the public interest for example, is the PT disposes of factory waste into the river in the middle of the settlement community. The disposal of the waste into the river leads to polluted river water, the smell of the unpleasant smell and the fish and other water animals die. Not only are rivers polluted by the waste, well water or groundwater around the factory can not be used for drinking, bathing, washing, and irrigating the soil. therefore it can be said that the PT is the responsible parties.

2. Interested Parties

The other party may apply for the dissolution of the PT is the party concerned with the reason of legal defect in the deed of establishment. Examples of implementation of this provision is the principle of establishment of PT. Limited Company Law recognizes that the establishment of a PT must be established by at least 2 (two) persons means a husband and wife with the unity of property? If we refer to the principle of PT as a capital association, then husband and wife with unity of property is not allowed to establish PT because it is considered as 1 (one) person. It may be considered a defect in the establishment so that it may be requested for dissolution from the interested parties.

3. Share Holders, Director Board and Commisioner

Other parties who may apply for dissolution of PT are shareholders, board of directors or board of commissioners based on the reason PT is not possible to proceed. The reason why PT will not proceed will consist of :[17]

1. PT does not engage in business (non-active) for (three) years or more, as evidenced by a notification letter delivered to the tax authorities;
2. In the case that most of the shareholders have been unknown since they have been summoned through advertisements in newspapers so that the GMS can not be held;
3. In the case of equilibrium of share ownership in the PT such that the GMS can not make a decision to elect each 50% (fifty percent) of the shares, or;
4. The wealth of PT has been reduced in such a way that with the existing wealth of PT is no longer possible continue its business activities..

Article 146 UUPT expressly stipulates that it can provide a court decision to dissolve the court as a public court, not a commercial court. Court to dissolve a PT

In the court's application for appeal, the party applying for the dissolution of the PT also submits the name of the liquidator who will disburse the assets of the PT, make payment of the debt to the creditor of the PT, and, share the remaining wealth of PT to the shareholder of PT if any.

In the event that the dissolution of the PT with the petition shall be against reasons such as if the prosecutor's office requests the dissolution of the PT to the District Court then the

[17] Supramono, Gatot. Hukum Perseroan Terbatas. Jakarta : Penerbit Djambatan, 2007.

prosecutor's office should provide a strong reason that the PT violates the public interest. In the dissolution on the basis of the General Meeting of Shareholders there is no need for any grounds so that this often leads to various interpretations of the grounds and shareholders who abandon dissolution.[18]

2. Negative impact of the dissolution of the Limited Liability Company through the District Court Decision

In accordance with the guidance of GBHN 1993-1998 that legal development must be able to produce national legal products originating from Pancasila and the 1945 Constitution, which is able to regulate the general tasks of the government and the implementation of national development. In this regard, the development of legal materials as one of the aspects of legal development is directed to the preparation of new legal products or the renewal of existing laws which are urgently needed to support development in all fields, especially economic development.[19] n order for a limited liability company to perform its functions properly in accordance with its role, the first step that needs to be done is a rearrangement of legislation in the field of limited liability company.[20]

On the basis of legal needs as a foundation in economic development, it is legalized and enacted by Law no. 40 of 2007 as a substitute for the old law in this case Law no. 1 year 1995 on Limited Liability Company. Despite the above facts, the birth of Law no. 40 of 2007 is also intended to synchronize the various international conventions in trade and economy carried out by the Indonesian government. In the international arena, Indonesia which has joined the World Trade Organization (WTO) has embodied a new dimension of legal transplant through legal ratification, such as: Money Laundering, Intellectual Property Act, and includes new Limited Liability Company Law.

The revocation of the enforcement of Law no. 1 of 1995 which was replaced by Law no. 40 of 2007 proves that most of the material contained therein is new in the law of the company in Indonesia. However, the amendment in principle does not change the legal teachings, legal philosophy, legal theory, and legal doctrine contained in UUPT. 1 year 1995, such as Piercing Corporate Veil, Fiduciary Duty, Standart of care, self dealing transaction, doctrine corporate opportunity, invravires and ultravires, doctrine business judgment rule, derivative action, and others.[21]

Legal dimension of Law no. 40 of 2007 on Limited Liability Companies in a broad outline are as follows :

a. Establishment, Articles of Association, and amendments to the Articles of Association, Corporate Register and Announcements;
b. Capital and Shares;
c. Work Plan, Annual Report and Profit Use;
d. Social and Environmental Responsibility;
e. General Meeting of Shareholders;
f. Board of Directors and Board of Commissioners;
g. Merger, Consolidation, Takeover and Separation;
h. Examination of the Company;
i. Dissolution, Liquidation, and Termination of Legal Entity Status of the Company;
j. Cost;
k. Other Provisions;
l. Transitional Provisions; and
m. Closing..

In the event of the dissolution of the Company, it is not necessarily discourse only. there are stages to be continued. Article 142 Paragraph (2) of Law Number 40 Year 2007 indicates that the dissolution of the Company shall be followed by liquidation by a liquidator or curator; and the Company can not engage in legal action, unless necessary to settle all affairs of the Company in the framework of liquidation. This means that the Company's Dissolution is conducted by liquidation process or process conducted by the liquidator or that due to bankruptcy by the curator to settle all matters that are involved with the Company which is dissolved in order not to become a problem in the future. As for the dissolution that occurs based on the resolutions of the General Meeting of Shareholders, the term of establishment stipulated in the Articles of Association has expired or with the revocation of bankruptcy based on the decision of the commercial court and the General Meeting of Shareholders does not appoint a liquidator, the Board of Directors acts as the liquidator. This is because the Limited Liability Company is an agreement, it can be dissolved by agreement also taken in the GMS (General Meeting of Shareholders). Herein acting as a liquidator is the Board of Directors upon agreement with shareholders.

In the event that the dissolution of the Company occurs with the revocation of bankruptcy is in the domain of the commercial court which means the commercial court must decide upon the bankruptcy and simultaneously terminate the curator's termination by observing the provisions in the Law on Bankruptcy and Suspension of Payment Obligations. In the process, the Board of Directors, commissioners and shareholders are not permitted to engage in any legal action. If, for example, the members of the Board of Directors, members of the Board of Commissioners, and the Company are jointly and severally liable.

[18] Gunawan Widjaja, 2004, Tanggung Jawab Direksi atas Kepailitan Perseroan, PT Raja Grafindo Persada,Jakarta.

[19] Rachmadi Usman, "Dimensi Hukum Perusahaan Perseroan Terbatas", PT. Alumni Bandung, Bandung, 2004, hal. 1.

[20] Tri Widiyono, "Direksi Perseroan Terbatas", Ghalia Indonesia, Bogor, hal. 17.

[21] Ketut Budiarhta, "Cara Pandang Undang-Undang RI No. 40 tahun 2007 dan Undang-Undang RI No. 17 tahun 2007 terhadap Corporate Social Responsibility (CSR)", Fakultas Ekonomi Universitas Udayana, Buletin Studi Ekonomi, Vol. 13 No. 2 tahun 2008, Denpasar, Abstract hal. 211.

Article 143 (1) of Law Number 40 Year 2007 states that the Company's Dissolution does not result in the Company losing its legal status until the liquidation is completed and the liquidator's accountability is received by the GMS or the court. This means that the dissolution of the Company does not remove its registered legal entity until liquidation and its liquidator accountability is accepted by the GMS or Commercial Court.

Proposed dissolution shall be conducted by the Board of Directors, Board of Commissioners or 1 (one) shareholder or more representing at least 1/10 (one tenth) of the total shares with voting rights, may propose the dissolution of the Company to the GMS. And the resolutions of the GMS become valid if taken in accordance with the provisions as referred to in Article 87 paragraph (1) and Article 89 of Law Number 40 Year 2007, in which the Dissolution of the Company commences at the time stipulated in the GMS decision.

Then Article 145 of Law Number 40 Year 2007 regulates the dissolution of the Company due to the law if the term of establishment of the Company stipulated in the articles of association ends. In Paragraph (2) it states that within a period of 30 (thirty) days after the term of the establishment of the Company ends, the General Meeting of Shareholders determines the appointment of the liquidator. Thereafter, the Board of Directors shall not engage in a new legal act on behalf of the Company, after the term of establishment of the Company stipulated in the articles of association is ended. In addition, pursuant to Article 146 Paragraph (1) of Law Number 40 Year 2007, the District Court may dissolve the Company on: the prosecutor's request based on the Company's reason for violating the public interest or the Company committing acts violating the laws and regulations; solicitation of interested parties based on reasons of legal defect in the deed of establishment; the application of shareholders, the Board of Directors or the Board of Commissioners on the grounds of the Company is unlikely to proceed.

In the determination of the court is also established the appointment of a liquidator. The liquidator has an important role regulated in Article 147 of Law Number 40 of 2007. Within no later than 30 (thirty) days from the date of the liquidation of the Company, the liquidator shall notify all creditors of the dissolution of the Company by announcing the dissolution of the Company in the State Gazette and State Gazette of the Republic of Indonesia; and the dissolution of the Company to the Minister to be recorded in the Company's register that the Company is in liquidation.

Such notice to the creditor in the State Gazette and State Gazette shall contain the dissolution of the Company and its legal basis, name and address of the liquidator; procedures for submitting bills; and the period of filing of the bill in which the period of filing of bill as referred to in paragraph (2) sub-paragraph d is 60 (sixty) days as of the date of the announcement Then Notification to the Minister as intended shall be accompanied by evidence: the legal basis for the dissolution of the Company; and notification to the creditor in the Newspaper as referred to in paragraph (1) letter a.

Notice to the creditor and the Minister by the Liquidator has not been made, the dissolution of the Company shall not apply to any third party. And In the event that the liquidator fails to perform the liquidator notification jointly with the Company is liable for losses suffered by third parties. There shall be a liquidator's obligation to perform the Company's liquidation in the liquidation process including the execution of: the recording and collection of the Company's assets and liabilities; an announcement in the State Gazette and State Gazette of the Republic of Indonesia concerning the plan to share the proceeds of liquidation; payment to creditors; payment of residual proceeds from liquidation to shareholders; and other actions that need to be done in the execution of wealth.

In addition, the liquidator assumes that the Company's debt is greater than the Company's wealth, the liquidator shall file a bankruptcy application of the Company, unless the rules of the other legislation specify, and all creditor's known identity and address, agree to the order being made outside of bankruptcy. The creditor may file an objection to the plan to divide the proceeds of liquidation within a period of no more than 60 (six) days from the date of announcement. In case the objection is rejected by the liquidator, the creditor may file a lawsuit to the District Court within a period of no more than 60 (sixty) days from the date of rejection. Which is also important material about the rights of creditors. Article 150 of Law Number 40 Year 2007, creditors who submit claims in accordance with the periods that are rejected by the liquidator may file a lawsuit to the District Court within a period of no more than 60 (sixty) days from the date of rejection. Creditors who have not filed their bills may file through the District Court within 2 (two) years from the dissolution of the Company. The liquidator can be replaced if it does not perform its duties properly. Article 151 of Law Number 40 Year 2007 stipulates: (1) In the event that a liquidator fails to perform its obligations as referred to in Article 149, upon the request of an interested party or at the request of the Prosecutor, the President of the District Court may appoint a new liquidator and terminate the old liquidator. (2) The termination of the liquidator as referred to in paragraph (1) shall be made after the person concerned is summoned to hear his statement.

3. Reconstruction of Dissolution of Limited Liability Company Through Court Decision based on the value of Justice

Starting from the word Reconstruction which means is to reshape, rebuild can be either facts or ideas or do remodel. Reconstruction comes from the word reconstruction which is given the understanding of rearrangement, rebuilding or rearranging and can also be given a reorganization. Understanding the reconstruction (reconstruction) is as "the act or process of building recreating, reorganizing

something".[22]

Reconstruction of the dissolution of a limited liability company through the establishment of the District Court is actually a lot of weaknesses in it, therefore it is necessary for the participation of the parties involved in building the Law 40 of 2007 bida for the better.

Beginning on August 16, 2007, the government passed a regulation governing the Limited Liability Company, namely Law no. 40 of 2007 which replaces Limited Company Law no. 1 Year 1995. The existence of Limited Liability Company Law is expected to ensure the conducive business climate, where the limited liability company as a pillar of economic development needs to be given legal basis to further spur national development.

The enactment of Law no. 40 of 2007 on Limited Liability Company, background of various factors, one of which is the factor of the advancement of world economy and progress in science and technology in the current era of globalization, which requires every development that occurs in society accommodated by a rule of law appropriate with the development and condition of society today, so that if there is a problem in society, the law can be used as a guide or rule of law.

Law No. 1 of 1995 on Limited Liability Companies, is deemed to be no longer in accordance with the existing developments, especially in the field of economy. Especially in business law, where as a result of the influence of globalization and free trade has given a drastic change in the life of the economy in general and the business world in particular.

The existence of a Limited Liability Company is very important, considering that a limited liability company is one of the most important and dominant companies in Indonesia in the economy. Therefore, the rules regarding the law of a Limited Liability Company shall be constantly updated in order to improve the legal rules of the Limited Liability Company.

The enactment of Law No. 40 of 2007 on Limited Liability Company brought significant changes to the business world in Indonesia. These changes shall be observed by all parties, so that all business activities of the company are always carried out in the right and proper legal corridor.

One form of refinement of Law no. 40 Year 2007 is a renewal of the company's management concept. The establishment of a limited liability company is faced with two interests, namely the interests of shareholders / owners and the interests of the wider community in this case is the stake holder and share holders. So with two interests that attract each other interesting, is expected on the management of the company that can access the interests of both parties. As a State official with a noble duty to uphold law and justice on the basis of truth and honesty accountable to Almighty God, the judge must possess qualities and attitudes that can ensure the proper functioning of the duties in accordance with the views of life and philosophy state and in accordance with the indonesian nation. therefore a judge must have the following nature :

a. Honest, independent, decision-making and free from influence both from inside and outside (independent)
b. Have faith in god, faithful to Pancasila and the Constitution of the Republic of Indonesia Year 1945,
c. Being honest, honest, fair and behaving impeccably. the position of the giver of justice is very noble, because it can be said that the position is only level under the God of the Most Merciful and merciful, so it can also be said that the jurisdiction is directly responsible to Him.

Besides, the judge also has social responsibility to the community (social accountability). Therefore, if there is a judge (the Chief Justice) to do the illegal pebuatan then, sangsinya not only in the form of positive legal sanctions, but the moral sanctions of society and spiritual sanction according to religious law, the judge in carrying out its authority must always be guided by etiqu Judge, above. As judicial justice officials Judge should be independence which hereinafter referred to as independence of judicial authority is a complex idea, not merely an eye as a value, but as a useful instrument of pursuing Another higher value that is the rule of law. The concept of the state of law and the independence of judicial power is felt to be analyzed from various aspects, both in the theoretical conception level, and in practical explanation from the standpoint of legal theory. According to Meusen, that the theory of law is a theory that examines and analyzes the laws and symptoms of symptoms both from the dimensions of normative, empirical, and in terms of strength, given the law in society of course pay attention to the legal system of Indonesia. The legal system in Pndonesia is the Pancasila legal system which adopts the best side of the Continental European system (Rechsstaat) with the Rule of Law system because the prismatic legal concept of Pancasila must be in accordance with the cultural roots of the nation that have typically lived in the life community. In the theory of law sovereignty explained the law became commander in charge of governing the life of the society so that it is expected to realize the welfare and legal certainty for the community.

it is Indeed, that in a state of law it is not automatically people will obey the law itself, but how efforts are made so that the law is adhered to and also there is protection in it so that the legal certainty and equality before the law becomes a necessity in the middle of society. To run all this there must be a capable and independent body in carrying out its duties that guard the law's enforceability itself. From the description above Reconstruction of Limited Liability Company Through the Determination of the Courts to realize the legal protection for shareholders, board of directors, or board of commissioners in a balanced manner.The legal reconstruction is as follows :

Table of Reconstruction

[22] Henry Campbell Black, *Black's Law Dictionary*, West Publising Co, Edisi ke-enam, Minnessotta, 1990, hlm 1272

Reconstruction in Article 142 Paragraph 1 letter c, Article 146, and Article 157 Paragraph 4 of Law No. 40 of 2007

Article that should be reconstructed	**Recommended reconstruction**	**Reason**
Article 142 (1) how dissolution happened: c. thru national court **Decision**;	**Article 142** (1) how dissolution happened: c. thru national court **Resolution**;	• The existence of disputes between the parties (shareholders, directors, and board of commissioners) • The existence of the Audi Et Alteram Partem principle which requires the presence of the parties before the court in a balanced manner. • Give equal rights to the parties mentioned above to prove the arguments of their lawsuit.. • Must be a lawsuit because parties can present evidence that is equally proportioned between the parties to the dispute.
Article 146 (1) national court could liquidates PT based from: a. **pleas from** prosecutors on the grounds that the Company violates the public interest or the Company commits acts in violation of legislation; b. **pleas from** nterested parties on the basis of the existence of legal defects in the deed of establishment; c. **pleas from** shareholders, Board of Directors or Board of Commissioners on the grounds of the Company is unlikely to proceed. (2) in cases of a **Resolution** the court must choose a liquidator.	**Article 146** (1) national court could liquidates PT based from: a. **Lawsuit from** prosecutors on the grounds that the Company violates the public interest or the Company commits acts in violation of legislation; b. **Lawsuit from** nterested parties on the basis of the existence of legal defects in the deed of establishment; c. **Lawsuit from** shareholders, Board of Directors or Board of Commissioner s on the grounds of the Company is unlikely to proceed. (2) in cases of a **Decision** the court must choose a liquidator.	
Article 157 (4) Any Company that fails to adjust its articles of association within the period referred to in paragraph (3) may be dissolved by a court decision on the **plea** of the prosecutor or an interested party.	**Article 157** (4) Any Company that fails to adjust its articles of association within the period referred to in paragraph (3) may be dissolved by a court decision on the **lawsuit** of the prosecutor or an interested party	

CONCLUSION

1. Implementation of the Dissolution of Limited Liability Company through the resolution of the National Court, namely Stipulation of a court that dissolves the PT without hearing the explanation from shareholders, directors and commissioners not in accordance with UUPT, because UUPT was formed to protect interests owned by parties - stakeholders , such as the interests of shareholders, creditors, and directors and commissioners. By hearing the statement of the board of directors and commissioners who are the board of the PT, the court can make a fair decision that can protect the interests of the parties mentioned above. In practice, the procedure and the implementation of the dissolution of a limited liability company can only be executed through a GMS which decides to dissolve the company, then due to the period of the establishment of the company has expired and the shareholders based on the result of the GMS not to renew and based on the Stipulation of the District Court on the existence of a petition filed by a or some shareholder by mentioning clear legal reasons.
2. Negative impact of dissolution of Limited Liability Company through Determination of State Court;

2.1. The legal consequences of the Limited Liability Company are dissolved, the Limited Liability Company can not engage in legal proceedings unless it is necessary to settle its wealth in the liquidation process. In the event that the Limited Liability Company is in the process of liquidation, the outgoing letter includes the words "in liquidation" behind the name . The liquidator of a Limited Liability Company that has disbanded shall notify all its creditors with a registered letter concerning the dissolution of the Limited Liability Company. The liquidator shall be responsible to the General Meeting of Shareholders for the liquidation conducted. The remaining wealth of the proceeds of liquidation is reserved for shareholders. The Liquidator shall register and announce the outcome of the liquidation process in accordance with the provisions of Articles 21 and 22 concerning registration in the Company Register and announcement in the State Gazette of the Republic of Indonesia.

2.2. Responsibility of Limited Liability Company in settling debt of Limited Liability Company to third party in case of dissolution of Limited Liability Company including share Owner have limited responsibility, that is as many shares owned. The Board of Directors is jointly and

severally liable for all unpaid liabilities of the bankrupt property. Such liability shall also apply to any member of the Board of Directors who is wrong or negligent who has served as a member of the Board of Directors within 5 (five) years before the decision of the bankruptcy declaration is pronounced. Thus set forth in paragraph (3) of Article 104 is the same as the commissioner. Whereas Legal Entity of a limited liability company is a legal subject who is responsible independently of all legal acts committed regardless if the act is authorized to the board in this case the Board of Directors of the company.

3. As for the law reconstruction are as follows :
   Based on the foregoing description, the reconstruction of a limited liability company through the establishment of a court of justice based on justice is as it is known, in the law of the event known two lawyers process namely "Contentious Procesrecht" or dispute law and "Non-Contentious Procesrecht" or law of non-dispute. Against "Contentious Procesrecht" commonly used letters of lawsuit to resolve disputes of the parties through the "Judge Judgment". In contrast to the "Non-Contentious Procesrecht" commonly used application letter to request "Determination of Judges". Based on "Contentious Procesrecht", also apply the principle of "Audi Et Alteram Partem" (listening to both parties). This principle argues that in the proceedings of proceedings in court, the Panel of Judges shall be the parties to the dispute to defend their rights and interests. In other words, the parties should be treated equally, fairly and impartially. Meanwhile, based on "Non-Contentious Procesrecht" apply the principle of "Voluntair" is; request to decide case to court without any dispute with other party (without disputes or differences with another party). So according to the authors what is the question of the applicant based on the legal principle of "Non-Contentious Procesrecht" is not in touch with the issue of rights and interests of others.

RERERENCES

[1] Abdul Hakim Muhammad. *Hukum Perusahaan Indonesia, Perseroan Terbatas, Aditya Bakti, Bandung, 2000*,hlm.15 .

[2] Gunawan Widjaja, 2004, Tanggung Jawab Direksi atas Kepailitan Perseroan, PT Raja Grafindo Persada,Jakarta.

[3] Habib Adjie, *Status Badan Hukum, Prinsip-Prinsip dan Tanggung Jawab Sosial Perseroan Terbatas, CV.Mandar Maju, Bandung, 2008*, hlm.. 7.

[4] Henry Campbell Black, *Black's Law Dictionary*, West Publising Co, Edisi ke-enam, Minnessotta, 1990, hlm 1272.

[5] Karl R. Popper, *Masyarakat Terbuka dan Musuh-Musuhnya (The Open Society and Its Enemy)*, diterjemahkan oleh Uzair Fauzan, Cetakan 1, *Pustaka Pelajar*, Yogyakarta 2002, hlm.110.

[6] Ketut Budiarhta, "Cara Pandang Undang-Undang RI No. 40 tahun 2007 dan Undang-Undang RI No. 17 tahun 2007 terhadap Corporate Social Responsibility (CSR)", Fakultas Ekonomi Universitas Udayana, Buletin Studi Ekonomi, Vol. 13 No. 2 tahun 2008, Denpasar, Abstract hal. 211.

[7] M. Yahya Harahap, *Hukum Perseroan Terbatas, Sinar Grafika,Jakarta, 2009*, hlm. 24.

[8] Munir Fuady, Hukum Bisnis Dalam Teori dan Bentuk Praktek, Penerbit Citra Aditya Bhakti Bandung

[9] Rachmadi Usman, "Dimensi Hukum Perusahaan Perseroan Terbatas", PT. Alumni Bandung, Bandung, 2004, hal. 1.

[10] Simon Fisher , Corporation Law (Australia : Butterworths, 2001) , hlm 102.

[11] Sri Rejeki Hartono, *Bentuk-Bentuk Kerjasama Dalam Dunia Niaga, Untag Pres, Semarang, 2000*, hlm6.

[12] _____, *Beberapa Aspek Pemodalan Pada Perseroan Terbatas, Indo Pres, Semarang,2000*, hlm 7.

[13] Supramono, Gatot. *Hukum Perseroan Terbatas*. Jakarta : Penerbit Djambatan, 2007.

[14] Tri Widiyono, "Direksi Perseroan Terbatas", Ghalia Indonesia, Bogor, hal. 17.

[15] *Kitab Undang Undang Hukum Dagang (KUHD)*

[16] *Undang Undang No.40 Tahun 2007, Ibid, h.8*

[17] *Undang Undang No.40 Tahun 2007, opcit, hlm.6*