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Limited Liability Company's Status After Insolvency: Dissolution or Rehabilitation?

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Abstract

Bankruptcy and postponement of debt payment obligations are facilities given by law to encourage collective debt settlement for debtors that are experiencing financial distress and therefore on a status of bad credit. After the debt settlement process is over, the debtor according to Article 215 - 221 Indonesian Law Number 37 Year 2004 ("Indonesia Insolvency Law") may request for financial rehabilitation. However, towards debtors whose form of legal entity is a limited liability company ("LLC") it is regulated in Article 142 paragraph (1) letter e Indonesian Law Number 40 Year 2007 ("Indonesia LLC Law") for such debtors to be dissolved after being condemned insolvent. These two variations of regulation allows room for conflict especially towards an LLC that is both capable and willing to continue their business after the removal of the insolvency status but is hindered by the Indonesia LLC Law. Therefore, this research is conducted in order to analyze the legal consequences of an LLC that–after being released from insolvent status–wishes to continue its business and has sufficient capability of doing so, based on both the Indonesia Insolvency Law and the Indonesia LLC Law. This research is normative research that uses statute approach and conceptual approach. The result of this research is that the dissolution regulation may be ruled out if the LLC has the ability to continue its business post-insolvency, under the condition that the LLC must plead for rehabilitation, having a written proof of payment satisfaction from the creditors.

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A. Introduction

There are only one goal in doing business: to gain profit. However, there is no insurance that one's business will forever flourish and its sales chart upraises every year. When faced with hiccups—specifically loss—under extreme conditions the business may halt and even stop. All is well if it stopped without any lingering responsibilities left behind. Reality is not as beautiful, however, as usually the state of loss itself may be followed by a ginormous amount of debt. When it reaches the peak—having exhausted all non-litigation possibilities to no avail—one may find themselves in a position of insolvency (for companies) or bankruptcy (for individuals). This litigation mechanism will then provide a way out to fulfill their responsibilities/debts while trying to retain the fairest outcome for the creditors who had not gotten their part of the deal. Once all is said and done, if there are still some potential left for the business to restart—namely, if the state of insolvency is caused by the lack of cash but there are still unliquidated assets available—the Insolvency Law presents rehabilitation as an option. However, another kind of law, the LLC Law, prevents access to that option as it clearly states that for a company that has gone insolvent, it is mandatory to end the business with dissolution.

To start with, not everyone has the capital to start and/or continue their business. Oftentimes it is difficult to attain funding for one's business. The businessmen who desperately need it will look for ways to obtain it. One of the various methods that can be used to gain access to funding is through bank loans, which proves to be the most dominating banking business activity. [1] The fact that bank loans are considered the most dominating is natural as the bank's greatest income derives from the credit's interest, aside from other fee based incomes such as

[1] Trisadini P. Usanti and Abd. Shomad, *Hukum Perbankan* (Jakarta: Kencana, 2017), 127.

guarantee bank, safe deposit box, credit card, L/C, etc.[2]

When borrowing money from a bank, they will ask for one or more assets to be used as collateral. This concept follows the "Collateral" part of the financial analysis tool "5 C's of Credit" that corresponds to the prudential banking system. The 5 C's of Credit consists of Character, Capacity, Capital, Condition, and Collateral. [3] The collateral is then regarded as a secondary source of obtaining debt-claim for the creditor in case the debtor defaults.[4] The item that becomes collateral must be transferable and incorporated with a certain amount of economic value.[5] The guaranteed value of the appraised collateral item in this matter determines the amount of money that the bank is willing to lend out. For example, the loan amount is Indonesian Rupiahs ("IDR") 50 million while the assets that are chosen as collateral have a total value of IDR 100 million.

The collateral needs to be appraised every year, keeping in mind the relevant factors such as the value depreciation or increase over time. [6] This is all done to protect the bank from gaining loss when the debtor is unable to pay the loan back. In addition, banks usually refrain from lending money to debtors who had planned to use the amount of money obtained from the credit agreement as their primary source of income. [7] This action is the embodiment towards the "Capital" part of the 5 C's of Credit. [8] The bank prefers debtors that are self-financing as it is a great risk and moral hazard otherwise.[9]

[2] *Ibid,* 128.
[3] John E. Baiden, "The 5 C's of Credit in the Lending Industry," *SSRN*, (2011): 9, https://dx.doi.org/10.2139/ssrn.1872804
[4] Inwon Song, "Collateral in Loan Classification and Provisioning," *IMF Working Paper*, (July 2022): 7, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=879878#
[5] Trisadini P. Usanti and Leonora Bakarbessy, *Buku Referensi Hukum Perbankan: Hukum Jaminan* (Surabaya: Revka Petra Media, September 2014), 22.
[6] *Ibid,* 12.
[7] Nurwahjuni, as stated in Teknik Pembuatan Akta III class in Law Faculty of Universitas Airlangga, (September 7 2023).
[8] *Ibid.*
[9] *Ibid.*

When the event of debtor becoming default happens, the bank will proceed with following the regulations regarding guarantee execution to receive their right for repayment through the secondary option–selling the collateral.[10] In Indonesia, the regulations used as the base for the creditors to use their right to execute collateral execution vary depending on the type of collateral, expanding into five different types of collateral and the specific regulation for the corresponding types:

1. *Burgerlijk Wetboek* ("BW") for Pawned Goods
2. Indonesia Law Number 42 Year 1999 for Fiduciary
3. Indonesia Law Number 4 Year 1996 for Mortgage
4. Indonesia Law Number 17 Year 2008 for Ship Mortgage
5. Indonesia Law Number 9 Year 2006 for Warehouse Receipt

The mentioned regulations are not the only ones used. For more in-depth explanation it is suggested to seek other papers written by people whose expertise is in Collateral Law, as this paper focuses not in the collateral aspect itself.

In practice, one debtor may be subject to more than one creditor. The assets may also be used as collateral in more than one credit agreement, keeping in mind that the interested parties are aware of such conditions. They must have no objections towards it and the whole contract must not violate the corresponding law; thus, any model of agreements is allowed as long as it does not contravene the regulations that apply such as the stipulation regulated in 1320 BW. There also exist credit agreements that do not include any collateral. In such cases, the creditors based their trust in getting repayment from the creditor by depending on the debtor's bona fide–the good faith principle that is part of its credit agreement's contractual obligations.[11] Jerry Hoff further explains the principle of structured creditors in insolvency law, which

[10] Trisadini P. Usanti and Leonora Bakarbessy, *Op. Cit.* 13.

[11] Y. Sogar Simamora, *Hukum Kontrak: Prinsip-Prinsip Hukum Kontrak Pengadaan Barang dan Jasa Pemerintah di Indonesia*, (LaksBang PRESSindo, September 2017), 33.

divided the creditors into three categories: (1) Secured Creditors; (2) Preferred Creditors; and (3) Unsecured Creditors. [12] This principle is not to be confused with the categorization of creditors according to the guarantee law in Indonesia.

Problems arise when the debtor is unable to proceed with their part of the deal ergo the phenomenon of default. For the secured creditors, they may execute the collateral attached to the respective agreements. This is if the collateral is on a 1-on-1 basis–one collateral for one agreement. If one collateral is used for more than 1 (one) agreement, there may occur arguments between the creditors on who gets to execute the collateral and gets the most out of it.

Indonesia uses *Burgerlijk Wetboek* as its basis for disputes that concern the civil law or private rights; based on 1131 BW, every creditor–be it secured, preferred, or unsecured–has their right to receive their debt-claim from the debtor. This principle is called the *paritas creditorum* principle, and along with the *pari passu pro rata parte* principle in 1132 BW, it begets the establishment of the insolvency law. *Pari passu* means that every creditor will be receiving debt settlement without precedence, and *pro rata parte* means that the portion received by each creditor is based on the amount of each creditor's receivable compared to the total of creditor claims towards the debtor's assets.[13]

Indonesia has a rather friendly jurisdiction for creditors. [14] In Indonesia Insolvency Law, the regulation provides a facility for creditors to settle on their debt-claim through collective debt settlement. As stated in the

[12] Jerry Hoff, *Indonesia Insolvency Law,* (Jakarta: Tatanusa, 1999), in: M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*, (Jakarta: Sinar Grafika, 2009), 32.

[13] M. Hadi Shubhan, "Legal Protection of Solvent Companies from Bankruptcy Abuse in Indonesian Legal System", *Academic Journal of Interdisciplinary Studies* Vol. 9, Number 2 (March 2020): 143-144.

[14] Jat Bains and Macfarlanes LLP, "International Comparative Legal Guides: Restructuring and Insolvency 17th Edition," (2023): 80.

previous paragraph, the insolvency law based its regulations towards the idea of protecting the creditors' debt-claim. As such, all of the debtor's assets are regulated to be added to the asset pool that will later be liquidated and distributed to all creditors by the selected curator.

There are special rules that apply for secured creditors. A creditor is called secured when alongside their main credit agreement there is a subsidiary agreement for collateral, be it fiduciary, mortgage, pawned goods, etc.[15] Although the collateral law allows execution of collateral once the debtor goes default, the Indonesia Insolvency Law withholds this right. It regulates that the right to execute will have to be paused within a specific time– for at most 90 days–as stated in Article 56 paragraph (2) Indonesia Insolvency Law. This state is commonly known in Indonesia as "a period of stay". As there is the *lex specialis derogat legi generali* principle, in case of an insolvency the creditors must obey the "period of stay" rule. They may use their right to sell the collateral after the period of stay is over, within the timeframe of two months and only through the process of auction. Once the time reaches its limit, the execution right is automatically taken from the creditors and given to the curator(s) in charge. The philosophy of this regulation is to avoid the creditors selling the collateral with lower-than-market price just to fulfill each of their own debt-claims while neglecting the other creditors, especially the unsecured creditors and in certain situations the unpaid workers.[16]

After the distribution of debt-claim is forwarded to all creditors by the curator(s), Indonesia Insolvency Law provides the means for the debtor to undergo rehabilitation. However, this does not apply to LLC due to the contradicting regulation in Indonesia LLC Law. It states that after it is decided by the court that

[15] M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan,* (Jakarta: Sinar Grafika, 2009), 172.

[16] *Ibid,* 173.

the debtor is deemed insolvent and therefore enters insolvency status, and has its assets taken by the curator to be put in the asset pool for collective debt settlement, the company must be dissolved. The two contradicting regulations invite legal uncertainty.

The legal uncertainty between the Insolvency Law and the LLC Law regarding what happens to a company after insolvency, needs to be properly discussed so that the company may know the right path that it needs to take and its rights given by the law while taking the correct legal basis into consideration. This idea of discussion had been brought upon previously by academic writers, such as Rodden and Carpenter, who perceives the method of rehabilitation to be a bumpy ride due to the conflicting regulations, and that companies tend to go for liquidation that ends up in dissolution, rather than trying for rehabilitation. [17] According to Lokman *et. al.*, rehabilitation is less likely chosen than dissolution, emphasizing the inability to pay their debts. [18] Only a few companies are rescued and able to continue with rehabilitation.[19] This paper however, gravitates more towards the companies that are insolvent but retains a degree of assets after the execution of assets pool by the curator(s), hence are qualified to proceed with rehabilitation.

B. Method

This research is a normative type of research and is written using the following approaches: conceptual approach and statute approach. Conceptual approach means that this research analyzes the concept of Insolvency Law that is used in Indonesia. On the other hand, statute approach is done through compiling related regulations regarding insolvency in

[17] Paul B. Rodden and James E. Carpenter, "Corporate Insolvency-Liquidation or Rehabilitaion," *U. Colo. L. Rev. 36,* (1963): 117.

[18] Norziana Lokman, Nor Faizal Mohammed, Nor Azida Mohamed, and Julizaerma Mohammad Khudzari, "Profiling Winding up Companies and Reason for Not Rescuing Their Business," *Journal of Administrative Science* Vol. 18 Issue 2, (2021): 28-47.

[19] *Ibid.*

the scope of Indonesia's law and depicting the most suited amd appropriate one to be used in this matter of research.

C. Results and Discussion

1. The Concept of Indonesia Insolvency Law

The government has a legitimate role to strengthen and protect commitment devices such as business contracts to reduce inequality and support wellbeing in accordance with economic development. [20] That, and the impact derived from the Asia Monetary Crisis in 1997 alongside the International Monetary Fund ("IMF") requesting for Indonesia to reform its insolvency law, drove the government to create a suitable insolvency law as a means of facilitating a way out from debts; hence, the reformation of the Indonesia Insolvency Law. [21] After all, without the existence of the insolvency law the creditors will be competing with one another to collect the debts using legitimate or illegitimate methods. [22]

a. Indonesia Insolvency Law's History and Amendments

Roman-Dutch civil law is the system that Indonesia uses. [23] The usage of it originates from the history of Dutch colonization that took place in Indonesia before Indonesia's Independence in 1945. As such, the Indonesian civil law system is an institutional "transplantation" from the Dutch influenced by various customary and Islamic law. [24] One of the regulations adopted from the Dutch was in regards to insolvency and it was adopted with little to no reformation as it was not popularly used. [25] The rarity of insolvency

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[20] Tim Jackson, "Governance for Prosperity," *Revue de Philosophie Économique* Vol. 11, (2010): 28.

[21] Stacey Steele, "The New Law on Bankruptcy in Indonesia: Towards a Modern Corporate Bankruptcy Regime," *Melbourne University Law Review* Vol. 23 Number 1, (1999).

[22] Shubhan, *Hukum Kepailitan: Prinsip, Norma, Loc. Cit.*

[23] Indonesian Legal Research. https://unimelb.libguides.com/c.php?g=930183&p=6721974#:~:text=Indonesia%20has%20a%20civil%20law,Code%20and%20Indonesian%20Criminal%20Code (accessed September 4, 2023).

[24] M. Yahdi Salampessy, "Book Review The Leiden Legacy: Concepts of Law in Indonesia," *Indonesia Law Review* Vol.4 No. 3, (2014): 385.

[25] Bagir Manan, "Kata Sambutan Ketua Mahkamah Agung RI," (2002) in: Ricardo Simanjuntak, *Undang-Undang Kepailitan dan PKPU Indonesia: Teori dan*

cases, one of which is because the procedures involving debt settlement through insolvency is considered complicated, has no certainty towards its the solution, and is argued to serve weak protection towards the creditors' interest.[26]

Faillissements Verordening 1905-217 Staatsblad 1906-348 ("*Faillissements Verordening 1905*") was the old insolvency law adopted from the Dutch that underwent amendment in 22 April 1998 through the legislated Peraturan Pemerintah Pengganti Undang-Undang Number 1 Year 1998 ("Perpu 1/1998").[27] This amendment deviated from the normal law making process due to the event of the Asia Monetary Crisis spanning from 1997-1999 that was declared as a "coercive urgency".[28] The Perpu 1/1998 was later made legally recognized as Indonesia Law Number 4 Year 1998.

After 5 (five) years of enforcing the aforementioned regulation, Indonesia Law Number 4 Year 1998 was observed to have several drawbacks and weaknesses; therefore, it needed to be amended once more.[29] One of its weaknesses was regarding the absence of an explanation for the concept of debt.[30] This had caused legal uncertainty, as the judges had variations of interpretation in correlation with it.[31] Some judges regarded debt with a narrow comprehension which limited the definition of debts to be one that was born through debt agreements, while some other judges regarded the meaning of debt with a broader comprehension which further included any kind of performance agreed upon a contract that needed to be done by the debtor, to be defined as debt.[32] To overcome the many weaknesses apparent in Indonesia Law Number 4 Year 1998, it was then amended

Praktik, (Jakarta: Kontan Publishing, 2023), 10-11.
[26] *Ibid.*
[27] Shubhan. *Hukum Kepailitan: Prinsip, Norma,* 7-8.
[28] Ricardo Simanjuntak, *Undang-Undang Kepailitan dan PKPU Indonesia: Teori dan Praktik,* (Jakarta: Kontan Publishing, 2023), 24.
[29] Shubhan, *Hukum Kepailitan: Prinsip, Norma,* 11.
[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid.*

into Indonesia Law Number 37 Year 2004–the Indonesia Insolvency Law that is used until now.[33]

The main difference between the old insolvency law and the current insolvency law used in Indonesia is the doctrine it is basing itself on. *Faillissements Verordening 1905* followed the insolvency test doctrine that was commonly interpreted the following: a debtor is only deemed insolvent after the presence of solid evidence was submitted to the court i.e. the debtor's cash flow reported by an accountant. [34] Indonesia Insolvency Law, on the other hand, follows the presumption of insolvency doctrine.[35] To deem one insolvent no longer insists upon the presence of the debtor's cash flow statement to show the debtor's financial health; the current law does not take into account whether the debtor is unwilling to pay its debt nor the debtor has the inability to pay.[36]

b. Indonesia's Current Insolvency Law Principles

The government was previously indicated to be lacking in its understanding towards the core concepts of insolvency, reflected in the misperceptions of insolvency in the eyes of the public. [37] The amendment of the insolvency law appears to realize this problem, resulting in a more domestic-oriented value for the suspension of payments.[38] This is reflected in the general explanation section of the amended Indonesia Insolvency Law that follows several principles as its basis:

1. Balance
   The enactment of the insolvency law to adjust fair balance of both the debtor and the creditor's interests, as the law prevents institution misuse and repelling any bad faith from both parties.
2. Business Continuity

[33] *Ibid.* 12.
[34] Simanjuntak, *Undang-Undang Kepailitan dan PKPU*, 50.
[35] *Ibid.*
[36] *Ibid.*
[37] Wimboh Santoso, Anika Fiskal, and Aria Suyudi, "Trends and Developments in Insolvency Systems and Risk Management: The Experience of Indonesia," *Credit Risk and Credit Access in Asia OECD,* (2006): 211.
[38] *Ibid.*

There exists several clauses that provide a chance for the debtor to experience rehabilitation post-insolvency and attain their ability to proceed with doing their business once again.

3. Fairness
   In its connection with both *paritas creditorum* and *pari passu pro rata parte* in BW, the insolvency law ought to prevent self-assertive acts of the creditors and arranging debt-claim through collective debt settlement.
4. Integration
   The insolvency law coordinates various regulations and integrates it into one legitimate framework. This shows that insolvency law does not stand on its own and is in a ceaseless relationship with other regulations such as *Herziene Indonesisch Reglement* ("HIR").

It can be concluded that the insolvency law's main objective is to ensure that every creditors receive equal distribution of their rights via the debtor's insolvent assets pool. [39] Other than that, protection for debtors with good faith and honesty against their creditors is also its equally important objective.[40]

Insolvency verdict made by the judges in court can be done towards debtors who complies with the conditions to request it in Article 2 paragraph (1) Indonesia Insolvency Law, which regulates two conditions:

a. That the debtor must have at least 2 (two) creditors; and
b. That the debtor has become default to at least one of the credit agreements, and said credit agreement has gone past the promised repayment's due date.

Even if the debtor's default condition is due to the course of a *force majeure*, it is still considered an eligible premise to request for an insolvency application. [41] The reason why the debtor must have more than 1 (one) creditors–thus,

[39] Gunardi Lie, "A Negative Pledge as an Alternative Solution to Achieve the Pari Passu Pro Rata Parte Principle," *International Journal of Sustainable Development & Planning*, Vol. 18 Issue 1 (Jan 2023): 265-274.

[40] B. Haryantho, M. Hadi Shubhan, & M. M. Zaidun, "The Principle of Solvency as Consideration for Judge in Solving Bankruptcy Case in Indonesia," *Journal of Law, Policy and Globalization* 96, 20-25. (2020): 23.

[41] Aries Saifullah, "Dampak Pandemi Covid-19 dalam Rangka Pengajuan Permohonan Pailit (Studi Kasus PT. Cowell Development)," *Juris-Diction* Vol. 5, No.6, (November 2022): 2081.

more than 1 (one) credit agreement–is due to the basis of Indonesia Insolvency Law: a legal tool for collective proceedings. [42]

The evidence to support the fulfillment of the two conditions stated above must be prima facie evidence, based on Article 8 paragraph (4) of the Indonesia Insolvency Law. Ricardo further explains that only when the debt is prima facie and undisputed, the debtor or creditor may use it as evidence for submitting an insolvency request.[43]

Article 178 paragraph (1) Indonesia Insolvency Law used the term insolvent/insolvency to refer to debtors who had either previously offered a peace agreement but rejected by the creditors, accepted by the creditors but rejected by the court, or the debtor did not offer any peace agreement. The legal consequence of an LLC that is declared insolvent by the court is that the debtor is now by law not authorized to manage or transfer any assets that they own. [44] These rights are passed to the curator(s) that are chosen as stated in the court's verdict, under the surveillance of the supervising judge.[45] The right to make legal agreements under the company's name is also under the curator(s) list of abilities given by the Indonesia Insolvency Law, while keeping in mind that the actions must be for the best of the debtor–mainly an increase of the insolvent assets pool.

Secured creditors during the division of insolvent assets have the highest priority. This means that during the division by the curator, secured creditors are first in line. The second priority goes to the preferred creditors that had this position given by the law. The last priority is given to the unsecured creditors and will receive their share based on *pari passu pro rata parte.* Article 189 paragraph (3) Indonesia Insolvency Law rules the possibility of setting apart a portion of the assets/money for the unsecured

[42] Shubhan, *Hukum Kepailitan: Prinsip, Norma,* 71.
[43] Ricardo Simanjuntak. *Op. Cit.* 18.
[44] *Ibid.* 108.
[45] *Ibid.*

creditors before then dividing it for the secured creditors and preferred creditors. This is an authority given by the insolvency law only towards the supervising judge. Furthermore, there exists a "special treatment" for preferred creditors namely the workers. Based on the Ruling of the Constitutional Court Number: 67/PUU/XI/2013 although the creditors that have collateral in their possession should get repayment first before the other creditors, as the wages are crucial for the workers' daily lives it is then put first and foremost. This is limited to only the workers' wage and does not include the workers' insurance and other bonuses.

Once the process of insolvency has reached the end–proven by the finished action of liquidating the debtor's insolvent assets, dividing the sum based on each unpaid credits and other obligations, and sending out the portions to all creditors listed in the accounts receivable list–if the debtor is willing to continue their business, the law provides a rehabilitation facility with several terms and conditions. This is in line with the business continuity principle as stated above, in the general section of the Indonesian Insolvency Law.

2. Dissolution vs. Rehabilitation for LLC Post-Insolvency

The curator will liquidate and distribute the debtor's insolvent assets towards the respective creditors according to the receivables list, as regulated in Indonesia Insolvency Law. Afterwards, there may occur one of the two resulting events: one where the debts are fully paid off, and another in which the debts are still unsettled. [46] In case of the first event, the debtor will then be able to request for a rehabilitation through means of the Indonesian Insolvency Law. However, when the latter happens–as there is no concept of debt forgiveness in Indonesia–the creditors may

[46] Shubhan, *Hukum Kepailitan: Prinsip, Norma,* 145-146.

request for repayment once again.[47] The ability to request repayment even after the process of insolvency is over is supported by the principle in which debt can't be erased with forgiveness.[48]

The Indonesia Insolvency Law regulates a facility that debtors can take post-insolvency called rehabilitation and it is regulated in Article 215 until Article 221. Rehabilitation is aimed to reciprocate the solvent status for the debtor and return it to its former state before insolvency–the greenlight to continue its business once more.[49] The debtor through rehabilitation will then have the ability to seek vindication via declaration of solvency status.[50] In order to be able to request for rehabilitation, it is required for the debtor to fulfill certain conditions. Specifically in Article 216, it is written the following:

> *" Permohonan rehabilitasi baik Debitor maupun ahli warisnya tidak akan dikabulkan, kecuali apabila pada surat permohonan tersebut* ***dilampirkan bukti yang menyatakan bahwa semua Kreditor yang diakui sudah memperoleh pembayaran secara memuaskan****."* (bolded by the writer)

Loosely translated, the rehabilitation facility can be requested by the debtor themselves or by their heir and will not be granted unless the rehabilitation request is attached with proof that states the satisfaction of every acknowledged creditors' debt-claim portion derived from the debtor's insolvent asset pool. Also, in Article 217 the rehabilitation request is regulated to be announced in a minimum of 2 (two) daily newspapers that are picked by the court.

On the other hand, the Indonesian LLC Law regulates company dissolution on the effect of insolvency verdict by the court. This is stated in Article 142

[47] Ardhita Pramudya, "Penormaan Prinsip Debt Forgiveness Dalam Undang-Undang Nomor 37 Tahun 2004 di Indonesia" (Thesis, Universitas Airlangga, 2017), 34.
[48] *Ibid.*
[49] Iham Arfian, "Upaya Rehabilitasi Debitor Perseroan Terbatas yang Telah Dinyatakan Pailit oleh Putusan Pengadilan" (Thesis, Universitas Airlangga, 2018), 37.
[50] Norna Haniaden and Mas Anienda Tien Fitriyah, "Akibat Hukum Debitor yang Tidak Menempuh Upaya Hukum Rehabilitasi Setelah Kepailitan Berakhir," *Justitia: Jurnal Ilmu Hukum dan Humaniora Vol. 9,* Num. 2, (2022): 665.

paragraph (1) of the Indonesia LLC Law, with its regulation written the following:

> *"(1) Pembubaran Perseroan terjadi:*
> a. *berdasarkan keputusan RUPS;*
> b. *karena jangka waktu berdirinya yang ditetapkan dalam anggaran dasar telah berakhir;*
> c. *berdasarkan penetapan pengadilan;*
> d. *dengan dicabutnya kepailitan berdasarkan putusan pengadilan niaga yang telah mempunyai kekuatan hukum tetap, harta pailit Perseroan tidak cukup untuk membayar biaya kepailitan;*
> e. ***karena harta pailit Perseroan yang telah dinyatakan pailit berada dalam keadaan insolvensi sebagaimana diatur dalam Undang-Undang tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang; atau***
> f. *karena dicabutnya izin usaha Perseroan sehingga mewajibkan Perseroan melakukan likuidasi sesuai dengan ketentuan peraturan perundang-undangan."* (bolded by the writer)

To summarize, there are six causes that will lead to the dissolution of a company. The cause bolded in the above quotation is cohesive and yet contradictory to Indonesia's Insolvency Law regarding rehabilitation after insolvency. It is loosely translated that dissolution happens in the event of the company being sentenced to insolvent status and its assets are therefore insolvent as well. Furthermore, in Article 142 paragraph (2) Indonesian LLC Law, before dissolving it is required to wind-up: liquidate of the remaining assets–if there is any left after the collective debt settlement–performed by a liquidator or curator. In addition, the company is not able to carry out any legal actions going forward unless it is crucial for the process of liquidation. In case of the company undergoing dissolution due to insolvency, the one carrying out the duty to dissolve the company is a curator and not a liquidator.[51]

In general, dissolution of an LLC isn't desired by all of the organs in said company; be it the stakeholders, the directors, the

[51] Ricardo Simanjuntak, *Op. Cit.* p. 55.

commissioners, and at times even including their workers and customers.[52] This is due to the harm it may cause to the company's profit and future endeavors of its peers.[53] However, if the action of dissolution is deemed inevitable, it is important to execute the dissolution using the correct methods as abided by the corresponding law.[54]

There is a discrepancy between the Indonesia LLC Law and the Indonesia Insolvency Law. The first one regulates dissolution as a must post-insolvency, while the latter provides a rehabilitation facility after the insolvency status is lifted by the court. The appropriate law used depends on the state of the company post-insolvency and by keeping in mind the different regulations between Indonesia Insolvency Law and in Indonesia LLC Law.

One, where the state of the company post-insolvency is beyond saving. This state involves the absence of assets as it has all been put into the insolvent asset pool. To add, the portions given to the creditors are not enough to cover the debtor's obligations. In this case, it is nigh impossible for the company to request for a rehabilitation unless they are able to get the creditors' statement of satisfaction in response to the share given by the curator(s) from the debtor's insolvent assets pool. Only when there is a concrete statement from the creditors that they are fine with the portion of repayment and that they will not sue the debtor again for another round of repayment through the mechanisms of law, rehabilitation is achievable for the corresponding company. That is, if the company itself is willing to continue their business further. If not, then using the Indonesia LLC Law might prove better for the debtor although risky for the creditors as their debtor will no longer exist after dissolution and thus they are not able to

[52] Jimly Ashiddiqy, "Pembubaran Perseroan Terbatas Karena Harta Perseroan yang Telah Dinyatakan Pailit Berada dalam Keadaan Insolvensi" (Skripsi, Universitas Airlangga, 2023), 32.

[53] *Ibid.*

[54] *Ibid.*

pursue a 100% repayment any more.

Two, where the state of the company post-insolvency is compromising and the company is willing to continue their business. In this state, there are remainders of the insolvent asset pool returned to the control of the company. The creditors have received their portion of the liquidated insolvent asset pool and is enough to cover the whole repayment for each creditor; therefore, all debts have been settled without any urgent obligation left unattended. In this situation, the previously insolvent company in the point of view of Indonesia LLC Law immediately becomes solvent as there are no more unpaid debts and/or obligations. That, and the will of the company to continue its business, encourages the fact that there is no need for the company to undergo dissolution. Rehabilitation may be requested to the court for an official delisting from the insolvent status. The continuation of the company will benefit especially the company's employees and affiliates. Not only will it satisfy the company's desire to continue running its business, it will also prevent further damages to the direct parties' interest, noticeably the fate of employees as they remain having a job at said company.

Using a more statute approach, there is a fundamental principle of legal interpretation that may be used in regards to deciding with method to follow and that is *lex specialis derogat legi generali.* This principle encourages the use of the law that is more specific towards the legal situation at hand. The status of a company here is discussed to be the aftermath of the happenings of insolvency and therefore it is more accurate to follow the Insolvency Law instead. When the company is unable to fulfill the conditions for rehabilitation as stated by it, only then the LLC Law may be brought upon the table. This is also in line with the previously mentioned principles in Insolvency Law, specifically Business Continuity that made sure there are options for the company to continue their business or ultimately stop, and

Fairness that wants to guard the creditors' rights.

D. Conclusion

In Indonesia there are two different regulations that govern the status of an LLC after the curator finishes dividing the liquidated assets to the creditors. First, through the perspective of Indonesia LLC Law it is stated that the company must undergo dissolution after its assets are condemned insolvent followed by the act of company's assets liquidation. Second, through the perspective of Indonesia Insolvency Law there exists a facility for the debtors to ask for rehabilitation post-insolvency. It is then concluded that the dissolution option may be opted out when the company has greater assets than its debts. Rehabilitation may be used by a company that does not manage to fulfill its obligations, but the creditors must provide a statement that explains their satisfaction towards the portion of repayment given through the curator(s). If such a statement isn't available, then the company should follow the dissolution regulation in Indonesia LLC Law. This conclusion is backed with the fundamental principle *lex specialis derogat legi generali* and the Insolvency Law principles. It is hoped that through this paper, companies that still have business potential e.g. company assets, even after insolvency is over, will find it appealing to ask for rehabilitation rather than seek dissolution.

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