BANKRUPTCY LAW AND COMPANY’S RESPONSIBILITY TOWARDS DEBT PAYMENT IN INDONESIA

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Abstract- This paper aims at discussing bankruptcy law and the responsibility of the limited company towards its debts when the company faced bankruptcy. The method used to discuss this issue is by collecting data and information advanced in the literature as well as by reading legal materials such as government legislations and other relevant materials. The study found that the purpose of bankruptcy law is a process associated with the distribution of wealth from debtors to creditors. Debt settlement through the institution of bankruptcy is to get a fair share for creditors, but for separatist creditors the provisions of suspension of execution and limitations on the duration of the guarantee execution in bankruptcy laws are not in line with the provisions of the law guarantees arranged in civil law. This suggests that bankruptcy laws are lex specialist of trading law, while the guarantee law is a lex specialist of a civil law. In case of the company bankruptcy, the responsibilities are not in the hands of any individuals in the company. The responsibility of the management of the company towards bankruptcy must meet the following requirements. (1) there is an element of fault (intentional) or negligence of Directors or Board of Commissioners; (2) to pay the debt and costs of bankruptcy should be taken in advance from company's assets. If the company's assets are not sufficient, then it should be taken from the personal assets of Directors or Board of Commissioners; (3) there should be a reverse authentication (omkering van bewijslast) for members of the Board of Directors or the Board of Commissioners who can prove that the company bankruptcy was not due to their intentional faults or mistakes. However, each members of the Board of Directors and / or members of the Board of Commissioners should jointly responsible for all liabilities that are not repaid from the bankruptcy assets.

Index terms- Bankruptcy law, limited company, debt payment, responsibility, globalization, board of directors, shareholders

I. INTRODUCTION

Globalization has brought many changes in Indonesia. These changes are not only in the areas social and economic, but also in the areas of culture as well as legal particularly those related to the business activities. A limited company or locally called Perseroan Terbatas (PT) as the main actor in the field of business has to compete with other companies both at national and at international level. To deal with this tight competition, however, this type of company tends to borrow from banks or other financial institutions. This debt is frequently taken in order to expand the business. This solution has caused many problems particularly associated with the debt settlements.

To ensure legal certainty between the parties, the government issued regulations on Bankruptcy Law. The important of this law is to manage the debt settlements among the parties. The law No. 37/2004 Bankruptcy and Suspension of Payment, the State Gazette No. 131/2004 and the State Gazette No. 4443 were the three examples of regulations issued by the government to deal with the debt settlement.

This paper aims at discussing the responsibility of the limited company towards its debts when the company faced bankruptcy. The method used to discuss this issue is by collecting data and information advanced in the literature as well as by reading legal materials such as government legislations and other relevant materials. However, before discussing the main subject of this study, the theoretical background of the legal aspects was addressed in section 2. Section 3 provides the results and discussion of the study. Finally, concluding notes are given in section 4.

II. LITERATURE REVIEW

a. The Development of Commercial Law

The previous arrangement towards limited company can be found in the Commercial Law - Wetboek Van Koophandel. However, due to economic globalization, there have been many changes associated with trade, investment, banking and financial
arrangement both at the national and the international level. This consequently made the previous legal arrangement was no longer suitable to deal with the present changes of the business activities.

To solve this problem and to meet the needs of law in accordance with the demand of the business world and national development, it is necessary to renew laws and regulations for limited company. Of the many laws that need to be revised include the law No. 1/1995 on Limited Liability Company, the State Gazette No. 13/1945, the State Gazette No. 3587, the Law No. 4/1971 on the Amendment and Additions On the provisions of Article 54 KUHD (Stbl.1847: 23), LNRI of 1971 No. 20, TLNRI No. 2959 and Ordinance op op de Indone­sische Maatschappij Aandelen (Gazette, 1939: 569 jo 717 (ordinance Airlines Indonesia). These laws and regulations are no longer valid.

The revise version of the above laws and regulations are the law No. 40/2007 regarding Limited Company, the State Gazette No. 106/2007, the State Gazette No.4756, which consists of 16 chapters and 161 articles. The definition of limited company was previously Naamloze Vennootschap (NV) The word Vennootschap means limited company. In the article 1 (1) of the law No. 40/2007, the limited company or Persero is defined as:

Limited Company or Persero is defined as a legal company which has capital alliance, established under the agreement, engage in business with a capital base that is entirely divided into shares and meet the requirements set out in this Act and in its implementing regulations.

The limited company obtained the status of legal company on the date of issuance of the Minister Decree in 2007. This definition was stated in Article 7 paragraph (4) of the law No. 40/2007. The article 7 paragraph (4) is the basic law of limited company. Thus, there is confirmation towards the legal status of company after the limited company is endorsed by Finance Minister. The activity of limited company should be consistent with the intent and purpose the establishment of the company, and not contrary to the provisions of law, public order and other matters.

The law institution is a legal entity created by law to meet the development of community life, and necessary existence, so-called legal entity. Therefore, it is called artificial person or human artificial or person in law or legal person (rechts person). In the Dutch legal literature, the term legal entity known as rechts person. However, the literature of the common law tradition is often referred to by the terms of legal entity, juristic person, or persons. In the dictionary of economic laws, it is defined as a legal entity which is the body or organization are treated as legal subjects, holders of rights and obligations. Note that, to become a legal entity, an entity must meet the requirements as follows: 1. Petition Requirements: a. Have their own property separately from the assets of the managers; b. With officials (as a representative in the act); c. Has the certain objectives.

The terms are obtained from the government arrangements. This legal entity has the legal entity and it is derived as an entity or entities which may own rights and acts like a man. The limited company has a wealth on their owned. Rochmat Soemitro said that the legal entity (rechtsperson) is a body that can have the property, rights and obligations as a private person. Furthermore Wirjono Prodjodikoro expressed the sense of a legal entity as an entity that is in addition to the individual human being is also considered to be acting within the law and which have rights, obligations and legal nexus to other people or entities.

Widjaja (2003) defined limited company as a legal entity. This legal entity has particular characteristics including independent. This characteristics has many differences compared with the other establishment. Details of the characteristics of limited company (PT) are as follows: 1. As capital associations; 2. Wealth and the debt PT is separated from shareholder wealth and debt; 3. the shareholders are: a. Responsible only on what is deposited, or limited liability; b. they are not responsible for any damages above the company liability company; c. they have no personal responsibility for the engagement made on behalf of company. 4. There is a separation of functions between shares holders and the Board or Directors; 5. Have a Commissioner who serves as supervisor; 6. The highest authority is the General Meeting of Shareholders. See, also, Widjaya Gunawan (2003).

The above legal status of company carries legal consequences that the company itself has the rights, liabilities, can negotiate agreements, and the wealth is separated from the rights, obligations and assets of the founders or shareholders. As "artificial person", the company may not be able to act on its own, the company does not have the will to execute on its own. In the company law, the management is run by the organs that will act on behalf of the company. These organs consist of competent human resources to act within the law. So to be able to act within the law, each organ has the duty and authority of their own.

In Indonesia, there are three (3) types of organs, namely the General Meeting of Shareholders (AGM), the Board of Commissioners and Board of Directors. Of the three organs, the directors have been granted rights and obligations or given tasks to conduct activities for and on behalf of the company, and to the interests of the company, under the supervision of the Board of Commissioners. Directors of the company in carrying out its duties its staff must always act in good faith, pay attention to the interests of the company, must be done in accordance with the duties and authority given to him, is not allowed to have a conflict with company. From these explanations, it is clear that the directors have been given trust in managing the company. This condition is called as the principle of trust or fiduciary duty.

A limited company is a form of economic activities that is mostly in the business world practice, and it is the most prevalent compared to other forms of business enterprises such as Firma, CV, Cooperative units. Due to economic globalization,
there have been many changes towards the development of law, especially commercial law. In order to adapt to the global economic development in the business world, Indonesia needs to revise the entire legal economy, especially in the areas of business law concerning “bankruptcy law”. In line with the rapid development of globalization and business trades, problems associated with companies’ debts are increasingly complex and requires effective rule of law. Global economic developments require Bankruptcy Law and rules that are able to meet the legal requirement for businesses to resolve the debt problems.

b. Bankruptcy Law

The history of bankruptcy law in Indonesia has existed since 1905. Initially the bankruptcy law was in Faillisement Verordening promulgated in the State Gazette No. 217/1905 in conjunction with the Gazette No. 348/1906 which were product of the Dutch legislation. However, the economic crisis in Indonesia in the mid-1997 had given unfavourable influence on the national economic life, and cause great hardship among the business world to continue their activities, including the obligations to creditors. To give opportunities for the creditors and the company as a debtor to seek a fair settlement, it is necessary to provide legal means that can be used quickly, openly and effectively. Of many laws that have to be issued to settle debts problems is the bankruptcy law, including legislation on suspension of debt payments. Due to these urgent needs, the Law on Bankruptcy so called Faillisement Verordening Statute 1905: 217 Statute 1906: 348 needs to be revised.

As a consequence, on April 22, 1998 the Government issued Government Regulation in Lieu Act (PERPPU) No. 1 of 1998 on the Amendment of the Law on Bankruptcy, LNRI 1998 87, TLNRI No. 3761, which was then set into law by Act No. 4 of 1998, LNRI 1998 No. 135, No. 3778 in TLNRI society. These amendments also have yet to meet the development and the needs of law in society, so that in December 2004 the Government issued the Law no 37/2004 on Bankruptcy and Suspension of Payment, LNRI 2004 No. 131, and TLNRI No. 4443. These laws and regulation repeal all previous bankruptcy laws.

The issuance of PERPPU 1 1998 has differences with Faillisement Verordening. These differences are as follows. Firstly, the. PERPU No. 1, 1998 consists of three (3) Chapter, namely, Chapter I: On Bankruptcy Article 1 to Article 211, 51 articles changes; Chapter II: On Suspension of Payment Article 212 to Article 279, 41 articles changes; Chapter III: On the Commercial Court, Article 280 to Article 289, consisting of 10 new articles. Whilst Faillisement Verordening Stb 1905 217 jo. Stb 346 in 1906, consists of two chapters, namely: a. Chapter I: On Bankruptcy Article 1 to Article 211; Chapter II: On the Payment Withdrawals (Surseance van betaling) Article 212 to 279 Article to 279.

Secondly, in Article 6, paragraph (4) PERPU No. 1, 1998, it was stipulated that the decision on the request for a declaration of bankruptcy should be set within a maximum period of 30 (thirty) days from the date of application for a declaration of registered bankruptcy. The objective of the article is to accelerate the process of resolving the bankruptcy. This time period is not found in Faillisement Verordening. Thirdly, legal remedies provided by PERPU No. 1, 1998 is Cassation and Judicial Review, which means Decision Bankruptcy and Suspension of Payment cannot be in the Appeal. While in Faillisement Verordening known their legal remedies Appeal.

Fourthly, about the Curator, based on Article 67 A PERPPU No. 1, 1998, the Receiver is: a. Heritage Hall; or b. other curators that are appointed as curator as an individual or a partnership domiciled in Indonesia, which has special expertise is needed in order to obtain and or settle the bankruptcy estate and registered with the Law Ministry. Whilst based on Faillisement Verordening that institutions that maintains and settled the bankruptcy is the wealth heritage institution. Fifthly, in PERPPU No. 1, 1998 it was stipulated that the declaration of bankruptcy and suspension of debt payments are examined and decided upon by the Commercial Court which is in the general courts, while in the Faillisement Verordening it was determined that the declaration of bankruptcy and retirement payments, made by the District Court where the residence has debts. Finally, in applying for bankruptcy, it should be done through a Law Advisory.

Furthermore, the law No. 37/2004 on Bankruptcy and Suspension of Payment has outlined many principles. There are about four principles in this law. The first is the balance principle in that there are provisions to prevent abuse of the institutions and agencies of bankruptcy by the dishonest debtor on one hand, and there are provisions to prevent bankruptcy institutions and agencies from creditors who have bad intention. The second is business sustainability principle in that there are provisions that allow prospective debtor company remains sustainable. The third is the principle of justice. This principle aims to avoid arbitrariness party collectors who seek payment for each bill against the debtor, irrespective to other creditors. The fourth is the integration principle. This principle integrates the formal legal system of both civil law system and civil procedural system.

It should be noted that the law no. 37/2004 has a wider coverage in terms of norms, the scope of the material, as well as debt settlement process. This broader coverage aims due to the facts of the development and the needs of law in society, while provisions for this effect has not been adequate as a legal means to solve the problem of debts in a fair, fast, open and effective.

In other countries, however, there are about ten principles associated with the bankruptcy law (Widjajati, 2003). These principles are as follows. The first is the principle of Parity Creditorum. This is the main principle of debt settlement in that debtors and creditors have equal position. Parity Creditorum principle implies that all the wealth of the debtor either in the form of goods both movable and immovable goods including treasure now belongs to the debtor and the goods owned by the debtor in the future will be tied to the settlement of obligations of the debtor. The principle of the western civil law adopted in articles 1131
and 1132 Book of the Law of Civil Law (Civil Code - Burgerlijk Wetboek). The second is the principle of Pari Passu Prorated Parte. The principles of Pari Passu Prorated Parte means such property is the guarantee for the creditors and the results should be shared proportionally (prorated) between them, unless the creditor was nothing in the legislation should take precedence in receiving debt payments. This principle emphasised on the division of property of debtors to pay off debts to creditors in a more equitable manner in accordance with the proportion (pont- gewijs pond) and not by way equally. This principle in the civil law was adopted in 1132 of the civil book law.

The third is the structured creditors principle. If creditors holding collateral material equated with creditors that do not hold collateral material, then it is the form of a unfairness. The principle of structured creditors are the principle that clarifying and classifying a wide variety of borrowers according to their own classes. In bankruptcy the creditor is classified into three (3) types, namely: the preferred creditors, creditors separatists and ordinary creditors (concurrent), each of which is different creditors positions.

The fourth is debt principle. This principle considers that the concept of debt is crucial, because without debt it is impossible bankruptcy case will be examined in court. In the absence of such debt, the essence of bankruptcy becomes nothing because bankruptcy is a legal intermediary debtors to liquidate assets to pay off debts to the creditors. This debt principle is the main basis for bankrupting the legal subject as very important for further investigation of the underlying principles of the norm debt. In the United States debt bankruptcy law was called the Claim. Claim requires the right to payment, namely the right to receive a payment, even if the claim form contingent, un liquidated, and un matured. Also, the same thing in Indonesia in that debt is a form of obligation to fulfil the feat in an engagement. Experts say that in the case of a by works or not do something implies that he has a duty to pay compensation, leave something or give something, then at that moment he had debts, have the obligation to meet achievement. Experts also argue that the debt also shows the debt obligation in civil law. The obligation can arise either from the agreement or of legislation.

The fifth is debt collection principle. This principle has meaning to avoid the coercion or retaliation from the creditor to the debtor bankrupt by billing his claim against the debtor or debtor property. In ancient times this principle is manifested in the form of slavery, cutting the body portion debtors (mutilation) and even slaughtering the debtor body (dismemberment). While in the modern bankruptcy law the principle is manifested in the form of, among others, asset seizure and liquidation of the debtor. With the bankruptcy law, it can provide a mechanism by which creditors can come together to determine whether the company should be forwarded debtor business continuity or not, and can force creditors to follow the scheme for their minority voting procedure. Therein lies the principle of debt collection from bankruptcy, which serves as a means of coercion for realization of the rights of creditors through liquidation of the assets of debtor.

The sixth is the pooling debt principle. This is a principle that governs how assets of the bankrupt shall be divided among creditors. In conducting the distribution of these assets, curator will be adhering to the principle of parity creditorum, Pari Passu Prorated Parte principles, as well as the distribution based on the type of each creditor (Structured principle Creditors principle) principles. It incorporates the settings in the bankruptcy system is mainly concerned with how the assets of the bankrupt to be divided among creditors. Starting from the judiciary authorities, procedural law, and the role of the supervisory judge and curator in the implementation of how to distribute assets debtors.

The seventh is the principle of debt forgiveness. This means that bankruptcy is not synonymous only as an institution defamation against the debtor or only as a means of pressure, but it can mean the opposite, namely, a legal order that can be used as a tool to ease burden that have to be borne by the debtor because as a result of financial difficulties, so it is not able to make payments on its debts in accordance with the initial agreement and even came to the amnesty for its debts so that its debts become clear at all. The implementation of this principle is that it should form a moratorium on debtors or known as the "Suspension of Payment” for a specified period of time, the exclusion of some assets of the debtors of the bankruptcy bundle, allowing for the debtor to start a new business without the burden of the debts of the old, the rehabilitation of the debtor, if he had actually completed bankruptcy proceedings, and other reasonable legal protection against debtors bankrupt.

The eighth is the universal and territorial principles. This principle implies that the bankruptcy decision from a court in one country, then the bankruptcy decision apply to all property debtor both located in the country where the bankruptcy decision was imposed or against property of debtors that are abroad. This principles emphasize the international aspects of bankruptcy or known by the term cross-border insolvency (bankruptcy in cross country) To overcome these needs provided the international legal order governing cross-border insolvency, United Nations Commission on International Trade Law (UNCITRAL) made a breakthrough that allows a country to recognize and enforce the bankruptcy decision issued by the foreign court. The model law in question is the UNCITRAL Model Law On Cross Border Insolvency With Guide To Enactment that was established in 1997.

The ninth is the principles of commercial exit from financial distress for Limited company bankruptcy. Dimensions fairness of the process of bankruptcy is situated on it protects the interests of both parties both for bankrupt creditors and bankrupt debtors. Apart from the bankrupt of limited company, it is also required an institution as another path of the bankruptcy decision. Institutions that can be used as an alternative to bankruptcy is an institution of restructuring the company (Corporate / Debt Restructuring). This, if done systematically and mature, will be beneficial in addition to the company concerned as debtors or creditors. The objective is to maintain a limited company as a debtor to be able to continue to conduct its business as a going
concern by providing opportunities to acquire companies leeway time reasonable in order to be able to repay its debts, either with or without renewing the terms of the agreement, or the other in an effort alternative to debt settlement through bankruptcy.

Finally, it is the principle of Bankruptcy decision should be approved by the majority of creditors. The decision toward bankruptcy of both creditor and debtor should be based on the agreement the creditors’ agreement. The majority creditor in question is the owner of most debts. For determining the majority creditor of more than 50% of the amount of debt of the debtor or 2/3 or ¾ of the amount of debt the debtor is the subject of bankruptcy laws concerned. This principle contained that bankruptcy is basically an agreement between the debtor and the creditor majority. If the agreement between debtors with creditors cannot be reached, then the new ruling did not merely an affirmation, but a fateful decision (decisive ) to resolve disagreements between the debtor and the creditor.

III. RESULTS AND DISCUSSION

The word bankruptcy is initially from the French language, namely 'faillite' meaning stagnated payment or strike. An individual person who strike or stalled or stopped paying its debts called 'Le failli'. In the Dutch language, it is used the term 'faillite', which has a double meaning, namely as a noun and an adjective, which is a legal order known to many countries, both of which adheres to the legal system of the Civil law and Common law. In the Indonesian language daily often used the term "bangkrut", while in English the term used is 'to fail' and in Latin it used the term 'failure'. In the Common Law system used the term "Insolvency", which is intended as an inability to pay the debt when the debt is due on the business of the debtor collapsed.

The term pailit during Indies are not included in the draft Trade Law (Wetboek van Koophandel) and is set in its own regulations into Faillisments -Verordening (Bankruptcy Act) since 1906. This were previously intended for traders, but then it is used for any group. Bankruptcy is derived from the word "bankrupt". Bankruptcy is everything related to the events of the state stopped paying the debts of borrowers who have fallen its due time payment. Bankruptcy is a process in which a debtor has financial difficulties to pay its debts, is declared bankrupt by a court, in this case the commercial court, because the debtor cannot pay its debts.

Definition of bankruptcy was not found in Faillisments Verordening and the law No. 4/1998. The definition of bankruptcy judicially can be found in the Article 1 paragraph (1) of the Law No. 37/2004 on Bankruptcy and Suspension of Payment which states that bankruptcy is common to all the wealth confiscated the bankruptcy debtor where the settlement of the debts will be handled by the Receiver under the supervision of the Supervisory Judge as stipulated in this Law”.

Bankrupt is a situation of debtors who are unable to make payments on debts to creditors. The disability to pay debts is usually caused by a condition of financial difficulties (financial distress) of the debtor's business that has suffered a setback. Meanwhile in Article 1 (1) and Article 2 (1) of the law No. 37/2004, stated that Bankruptcy is a state of the law established by the Commercial Court against the debtor that has at least two creditors and did not pay at least one debt which has fallen time and billable.

For the purposes of the business world in solving the problems debts in a fair, fast, transparent, and effective, there should be indispensable device that supports the law. There are several factors needed for regulation regarding bankruptcy and suspension of debt payments, namely:

1. To avoid the seizure of property the debtor, if in the same time there are some creditors who collect receivables from debtors;
2. To avoid any collateral material creditor rights holders who are claiming rights by selling the debtor's property without regard to the interests of the debtor or other creditors;
3. To avoid any fraud committed by one of the creditors or the debtor itself. For example, the debtor seeks to provide benefits to one or several specific creditors so that other creditors are impaired, or any fraudulent act of the debtor to get all of their wealth with the intention to relinquish its responsibility towards the creditors.

The main requirement to be declared bankrupt is as follows. The first is a debtor has at least two (2) or more creditors. The second is that the debtors do not pay off at least one debt that has matured and could be charged. What is meant by "debt due and billable" is an obligation to pay the debt that has matured, either because it has contracted, due to the acceleration time billing as agreed, because of imposition of sanctions or penalties by the competent authority, as well as the decision of the court, arbitrator, or arbitration assembly. There is requirement to present two or more creditors, known as "Concursus Creditorum". This suggests that the number of creditors is a must, but not the amount of debts.
The law No.37/2004 has no limitation on the amount of debts. In the article 8 paragraph (4), it was mentioned that "the meaning of" facts or circumstances which proved to be a simple "is the fact of two or more creditors and the fact money due and not paid. Whilst the in the large amount of debt to be transferred by the applicant and the defendant does not preclude the declaration of bankruptcy. Note that the details of the regulation to request bankruptcy and other relevant materials can be read in the law No.37/2004.

In terms of the protection towards creditors, the law No. 37/ 2004 has outlined many important articles. The Article 2 paragraph (1) of the law 37/2004 mentioned that there are three (types of) creditors. The first is concurrent creditors. These are creditors that are not included in the secure creditor and creditor preference. Concurrent creditors are creditors who have the right to obtain repayment together without rights take precedence, calculated the amount of the individual receivable against the overall receivables of the entire assets of the debtor. Accounts-receivable repayment is taken from the remaining proceeds from the sale / auction of the bankruptcy estate after being taken part by the separatist creditors and creditors preference. This is the general creditors of the principle of pari passu prorated parte. (Article 1132 of the Civil Code).

The second is Secure creditor. This is a creditor's receivable is secured by collateral material (encumbrance, mortgage, pledge, and fiduciary), which can act alone. Creditors are not affected by the decision of a declaration of bankruptcy debtor, meaning that it can execute their rights as if nothing happened bankruptcy debtors (Article 55 paragraph (1) R.I Act 37 of 2004). Creditors may sell his goods as collateral, as if no bankruptcy. Proceeds from sale of receivables was taken, whereas if there is a cash balance paid to the curator as boedel bankrupt. Conversely, if the proceeds were not sufficient, for unpaid bills can be included as a concurrent creditor. The third is the preferred creditor This is the creditor that has the right to precedes the nature of its receivables by law given the privilege (Privilege –article 1139 and Article 1149 of the Civil Code). Note that for separatist creditors and preferred creditors, they can apply for a declaration of bankruptcy without losing collateral rights over materials they have against the debtor wealth. Their right should be given first.

Basically, the creditors have the same status (creditorum parity principle) and therefore the creditors have the same rights on the results of the execution of bankruptcy trust. The division of creditors in bankruptcy should be in accordance with the principles of structured creditors who is defined as the principle that clarifies or categorize different kinds of creditors in accordance with the respective class. The division of the sales results of bankruptcy is carried out in order of priority in which creditors who get a share higher position ahead of other creditors, who has a higher position to get more division formerly of creditors other inferior, and between creditors who have obtained the same level with the principle prorate payment (pari passu prorated parte). This principle in the western civil law is adopted in the Article 1132.

In the case of bankruptcy due to mistakes made by Directors and the assets to pay debt is not sufficient to pay, the article 104 paragraph (2) of the Company Law provides that any member of the Board of Directors should jointly be responsible to repay the debts. Such responsibility referred to above, also applies to incorrect or negligent Directors who served as members of the Board of Directors within a period of 5 (five) years prior to the decision of the Board of Directors declaration of bankruptcy. However, the members of directors do not have to be responsible the bankruptcy of the company, if it can be proved that: (a) Bankruptcy is not due to their mistakes; (b) had maintains good faith, prudence, and full responsibility for the interests of the company and in accordance with the purposes and objectives of the company; (c) do not have a conflict of interest, either directly or indirectly, for all acts of management performed; and (d) have taken action to prevent bankruptcy. Furthermore, directors have no authorization propose bankruptcy on their own company to the Commercial Court, prior to obtaining approval of the general meeting of shareholders, without prejudice to the provisions stipulated in the Law On Bankruptcy and Suspension of debt Payments.

In terms of commissioner board responsibility, it was mentioned in the Article 114 paragraph (3) of the Company Law that the board of commissioners has no responsibility towards company’s bankruptcy, if he/she can prove: (a) Has conducted surveillance in good faith and prudence for the interests of the Company and in accordance with the purposes and objectives of the Company; (b) does not have a personal interest either langsug or indirectly, of acts of management Board of Directors resulting in losses; and (c) has been providing advice to the Board of Directors to prevent continuing losses incurred.

Moreover, shareholders cannot be held personally responsible for the engagement made on behalf of the company and is not liable for the losses of the company if it is over than that shares owned. This statement clearly confirms that the shareholders are only liable for payment of all shares owned and do not include his/her private assets. This is outlined in paragraph (1)of the company Law. However, this statement does not apply if: (a) Terms of the company as a legal entity has not been or are not being met; (b) the shareholders are concerned either directly or indirectly in bad faith take advantage of the company for personal gain; (c) the shareholders concerned are involved in the unlawful act committed by the company; or (d) the shareholders are
concerned either directly or indirectly, unlawfully use the wealth of the company, which resulted in the company becoming the wealth is not enough to pay off the company’s debt.

In summing up: The bankruptcy law in Indonesia has outlined many aspects towards the case of the bankrupt companies. It is not only defined the meaning of the bankruptcy, but more importantly it has already outlined details protection for creditors and responsibility of the shareholders, directors, the board commissioners.

IV. CONCLUDING REMARKS

The bankruptcy institution is a legal instrument provided by the law to settle debts between debtors and creditors. This institution is established to overcome the problems of wealth if the debtor is not able to pay all its debts to all creditors. The purpose of bankruptcy law is a process associated with the distribution of wealth from debtors to creditors. Debt settlement through the institution of bankruptcy is to get a fair share for creditors, but for separatist creditors the provisions of suspension of execution and limitations on the duration of the guarantee execution in bankruptcy laws are not in line with the provisions of the law guarantees arranged in civil law. Thus, bankruptcy laws are lex specialist of trading law, while the guarantee law is a lex specialist of a civil law.

In case of the company bankruptcy, the responsibilities are not in the hands of any individuals in the company. The responsibility of the management of the company towards bankruptcy must meet the following requirements. (1) there is an element of fault (intentional) or negligence of Directors or Board of Commissioners; (2) to pay the debt and costs of bankruptcy should be taken in advance from company's assets. If the company's assets are not sufficient, then it should be taken from the personal assets of Directors or Board of Commissioners; (3) there should be a reverse authentication (omkering van bewijslast) for members of the Board of Directors or the Board of Commissioners who can prove that the company bankruptcy was not due to their intentional faults or mistakes. However, each members of the Board of Directors and / or members of the Board of Commissioners should jointly responsible for all liabilities that are not repaid from the bankruptcy assets.

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