



# Liquidator Liabilities in Doing Management and Settlement of the Company's Assets

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**Abstract.** The government passed Investment Law Number 25 of 2007. Investors are required to follow all applicable rules and regulations. Employers must submit to the government before carrying out their operations, according to Article 6 of Law Number 7 of 1981 Concerning Mandatory Reporting of Employment in Companies. Among the topics covered in these studies is worker safety. Article 142 of Law Number 40 of 2007 governs the Company's dissolution in the event of a GMS ruling. The liquidator must carry out the liquidation when the Company is dissolved. The government must be notified 30 days in advance of the Company's operations ceasing. The duties that have been and will be imposed on their employees are one of the criteria. According to the applicable rules and regulations, the dissolved company appoints a liquidator to oversee and settle the company's assets. The research tries to determine how employees'/laborers' rights are paid upon the dissolution of the Company, what the liquidator's commitment to workers' rights is, and what the government's stance toward the dissolution of the Company is. The rule of law theory and the notion of justice are employed. The findings suggest that normative and sociological legal approaches may be used to undertake research on management and settlement by liquidators. In addition, interviews were conducted with workers, the government, and liquidators. To summarize, workers are not entitled to severance compensation under Article 164 paragraph (3) of Manpower Law Number 13 of 2003. Workers' rights under relevant regulations are not respected by liquidators.

**Keywords:** Process · liquidation · Company

## 1 Introduction

According to Article 27 paragraph (2) of the 1945 Constitution, "every citizen has the right to labor and to a fair livelihood for mankind." Following that, the government created Investment Law Number 25 of 2007, which governs investors' rights, obligations, and responsibilities. The assurance of rights, LawLaw, and protection is one of the investors' rights [1]. Every investor is required to follow all applicable rules and regulations [2]. Every investor is responsible for ensuring the safety, health, comfort, and welfare of their employees [3].

A legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital that is entirely divided into shares and

meets the requirements stipulated in this Law and implementing regulations is referred to as a Company in Law Number 40 of 2007. The entrepreneur is required to report to the government one month before starting his business and one month before ending his firm, as outlined in Law Number 7 of 1981 concerning Mandatory Employment Reporting in Companies. Entrepreneurs require employees to complete the labor while manufacturing goods and services. The working relationship between workers/labour and employers/entrepreneurs is governed by Manpower Law Number 13 of 2003. This Law governs the rights and responsibilities of employees and employers. The mentioned report stressed worker protection [4]. Assume the entrepreneur or management suspends all business operations. In that scenario, they must declare the duties imposed on their employees by applicable laws and regulations, work agreements, labor agreements, and local customs [5]. Violation of the reporting referred to there is a legal sanction against the Company [6].

The working connection between the entrepreneur and the worker is governed by a labor agreement that includes job elements, salaries, and instructions. The agreement describes the worker's duty as well as the amount of pay provided to the worker/labourer by the entrepreneur. Employers and workers enter into employment contracts based on the [7]. The parties' employment agreement that violates the legal provisions is null and invalid. Every business owner is required to follow the working hours regulations. Specifically, 7 (seven) hours in one day and 40 (forty) hours per week for 6 (six) working days in one week; or 8 (eight) hours in one day and 40 (forty) hours per week for 5 (five) working days in one week [8]. Employers that employ workers/labourers who work more than the working period specified in Article 77 paragraph (2) must fulfill the criteria, specifically the approved worker/labourer in question. Overtime work is limited to three (3) hours per day and fourteen (14) hours per day. Week. (2) Employers who employ workers/labourers beyond the normal working hours must pay overtime [9].

A violation of Article 78 is penalized by a minimum of one month in prison, a maximum of twelve months in prison, and/or a minimum punishment of Rp. ten million and a maximum fine of Rp. one hundred million. (2) The offense at hand is a felony [10]. Every worker has the right to a reasonable living wage for the sake of mankind. In order to ensure a living salary for all citizens, the government enacts a minimum wage regulation. Under Article 88 paragraph (3) letter a, the minimum salary comprises of the minimum wage for the province or district/city and the sector within the province or district/city. The minimum wage is designed to cover essential living expenditures. The Governor establishes the minimum wage after taking into account the recommendations of the Provincial Wage Council and/or the Regent/Mayor [11].

Minimum wage violations are penalized by imprisonment for a minimum of one year and a maximum of four years, as well as a Rp. A minimum of Rp. 100,000,000.00 and a maximum of Rp. 400,000,000.00. The offense at hand is a felony [12]. Workers' rights are monitored in accordance with Law No. 3 of 1951 about the Declaration of the Applicability of the Labor Inspection Act of 1948 No. 23 [13]. Labor Inspections are undertaken to monitor the implementation of labor rules and regulations in certain [14]. Employers are not permitted to fire their employees. Employers may terminate workers'/labourers' employment connections if the firm fails, but not if the company has lost money for two years in a row or if there is a force majeure. The Company, on

the other hand, makes efficiency, provided that workers/labor are entitled to severance pay equal to two times the provisions of Article 156 paragraph (2), a reward for service period equal to one time the provisions of Article 156 paragraph (3), and compensation for rights under the provisions of Article 156 paragraph (4) [15].

If the Company reports a loss, the results of a public accountant's audit must be given. The liquidator is in charge of the company's liquidation or closure. The loss of the Company's legal entity status does not occur until the liquidation is concluded and the GMS or the court recognizes the liquidator's responsibility. Since the Company's demise, every correspondence to third parties must include the word "in liquidation" after the Company's name [16]. Furthermore, the liquidator's role in settling the Company's assets during the liquidation process includes recording and collecting the Company's assets and debts, publicizing the plan to distribute the assets resulting from the liquidation in newspapers and the State Gazette of the Republic of Indonesia, making payments to creditors, and making payments to shareholders with the remaining assets resulting from the liquidation. If the liquidator feels that the Company's debts exceed its assets, the liquidation must submit a petition for the Company's bankruptcy [17].

A firm in the Jakarta region manufactures stainless steel filling cabinets. The Company has its headquarters in Japan, and it employs Japanese residents to operate its subsidiaries throughout Indonesia. Companies that have been operating in Indonesia for decades make a high profit. However, because employees' salaries plus benefits do not remain constant with the minimum wage, there is a shortfall of minimum wages. Profits have fallen in the previous two years, and the corporate office in Japan has shuttered the branch in Indonesia. Appoint a liquidator to oversee the Company's administration and settlement. Workers' severance compensation entitlements have not been provided, although the Company has paid for Indonesian stock. The research intends to learn how employees' rights are paid at the dissolution of the company, what the liquidator's commitment to workers' rights is, and what the government's attitude toward the dissolution of the company is.

## **2 Method**

The theory used is the rule of law theory and the theory of justice.

## **3 Result and Discussion**

### **3.1 Purchasing**

#### **3.1.1 Payment of Workers' Rights Against the Dissolution of the Company**

Indonesia is a legal state, as stated in the 1945 Constitution. Based on the definition of the problem, all actions taken by Indonesian nationals must adhere to the rule of law. A Limited Liability Company, or Company, is a legal organization that is a capital partnership that is founded by an agreement, does business with authorized capital that is wholly split into shares, and satisfies the standards provided in this Law and its implementing laws [23]. Organs are available at a few businesses. The Company's organs

are the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners [24].

The General Meeting of Shareholders, abbreviated as the GMS, is the highest decision-making body in the Company, with authority not granted to the Board of Directors or the Board of Commissioners within the limits provided in this Law and/or the articles of organization [24]. The Board of Directors is the Company's Organ, which is authorized and fully responsible for the Company's management for the benefit of the Company, in accordance with the Company's purposes and objectives, and represents the Company, both inside and outside the court, in accordance with the provisions of the articles of association [26]. The Board of Commissioners is the Company's Organ in charge of carrying out general and/or specific supervision in accordance with the articles of organization and providing advice to the Board of Directors [27]. According to AV Dicey's decision on the rule of Law, the method for forming a business as stipulated in Law No. 40 of 2007 involves the following steps:

- (1) the rule of law or the supremacy of law;
- (2) equality before the law or equality before that law; and
- (3) due process of law [28]

The Company's interaction with its employees is governed by the Manpower Law, which governs workers' and employers' rights from the start of the employment relationship. FJ Stall's interpretation of the rule of law, which includes the following fundamental elements:

- (1) Human rights recognition and protection;
- (2) separation of state authority based on the principle of trias politica;
- (3) government based on the rule of law (wetmatig bestuur); and (4) presence of a state administrative court [29].

### 3.1.2 Businessman

Entrepreneur is [30] (a) an individual, partnership, or legal entity that operates a self-owned company; (b) an individual, partnership, or legal entity that independently operates a company that is not his own; and (c) an individual, partnership, or legal entity residing in Indonesia who represents the company referred to in letters a and b that is domiciled outside the territory of Indonesia.

Company is defined as (a) any type of business, legal or not, owned by an individual, a partnership, or a legal entity, both privately and publicly owned, that employs workers/laborers by paying wages or other forms of remuneration; (b) social enterprises and other businesses that have management and employ other people by paying wages or other forms of remuneration.

According to Abdul Kadir Muhammad [32]:

*“Company is any form of business that runs every type of business that is permanent, continuous and established, works and is domiciled within the territory of the Indonesian state with the aim of obtaining profits or profits”.*

Employers, in addition to entrepreneurs, are persons, entrepreneurs, legal entities, or other entities that employ employees by paying salaries or other types of recompense [33].

### *Labor*

Labor is defined as everyone who can do labor to generate commodities and/or services for their personal needs as well as the needs of the community [34]. The workforce is quite wide, covering all persons who are able and permitted to work, whether they are currently employed, self-employed, or do not have a job [35]. Meanwhile, a worker is defined as anybody who works for pay or other types of recompense [36]. The Worker is every working-age resident who carries out economic activities, both in the employment relationship in the company and outside the employment relationship, such as self-employed workers, family workers and workers in other informal sectors. Indonesia sets a minimum age limit of 15 years. However, it must be admitted that several people under the age of 15 still work, for certain reasons, forced to work to help family members or as family workers [37].

### *Agreement*

Employers and employees have a labor agreement that includes components of work, remuneration, and orders [38]. An employment agreement is a contract between a worker/labourer and an entrepreneur or employer that specifies the parties' employment conditions, rights, and duties. The employment agreement is either written or oral. (2) The applicable rules and regulations [39] carry out the requisite written work agreement.

- (1) An employment agreement is formed on the basis of: (a) both parties' agreement; (b) the ability or ability to do legal activities; (c) the presence of the agreed work; and (d) the agreed work does not violate public order, decency, or relevant laws and regulations.
- (2) The labor agreement of the parties that is in conflict with the requirements referred to in paragraph (1) letters a and b may be canceled. (3) By law, any labor agreement between the parties that contradicts the provisions referred to in paragraph (1) letters c and d is null and void [40].

An agreement is an occurrence in which one person pledges to do something to another person or the two persons swear to accomplish something [41]. An agreement is an event that occurs when one person commits to another or when two people vow to accomplish something. The agreement is divided into three types based on the type of tasks promised to be completed, namely [42]:

- (a). Agreement to give/deliver an item;
- (b). Agreement to do something;
- (c). An agreement not to do anything."

The government provides protection to workers and employers, the protection consists of:

### *About Working Hours*

Every entrepreneur must adhere to the working hours restrictions, which are 7 (seven) hours per day and 40 h per week on six working days per week; or 8 h per day and 40 h

per week on five working days per week. Certain industries or occupations are excluded from the working hours restriction. Employers who hire employees who work more than 7 or 8 h per day must meet the following guidelines [43]: Overtime work can be done for a maximum of 3 h per day and 14 h per week with the worker's permission. Employers who hire workers/labourers after their regular working hours must pay overtime. Overtime work and overtime wage restrictions are controlled by Minister of Manpower Decree No. 102/MEN/VI/2004 on Overtime Time and Overtime Wage Calculation.

#### *About Wages*

Wage is the worker's or laborer's entitlement to money as a reward from the entrepreneur or employer, which is determined and paid according to a work agreement, agreement, or regulatory constraints, including allowances for the worker/laborer and his/her family for a job. Work and/or services done or on the way [44].

Wages are protected by the government through the establishment of [45] minimum wages: a. minimum wage by province or district/city; and b. minimum wage by sector within the province or district/city. (2) The minimum wage, as established in paragraph (1), is designed to fulfill the necessities of life. (3) The Governor establishes the minimum wage mentioned in paragraph (1), taking into account the recommendations of the Provincial Wage Council and/or the Regent/Mayor.

#### *Regarding Termination of Employment*

To avoid employment termination, employers, workers/labourers, trade unions/labour unions, and the government must all cooperate together. (2) If every effort has been made, but termination of employment is unavoidable, the entrepreneur must negotiate the intention to terminate the employment relationship with the trade union/labour union, or with the worker/labourer concerned if the worker/labourer concerned is not a member of the trade union/labour union. The Trade Union. Assume the conversations do not result in an agreement. In that case, the entrepreneur can only terminate the worker/employment laborer relationship after getting a resolution from the industrial relations dispute resolution agency [46].

Termination of employment because the Company is closed and not because of a loss, the worker is entitled to severance pay 2x Article 156 of the Manpower Act.

#### *Problem*

PT. Nagawa is a foreign company with 30% Indonesian shares, the Company's head office is domiciled in Japan. The Company produces filling cabinets made of stainless steel. Wages given to workers are below the provincial sectorial minimum wage and non-fixed benefits. Furthermore, the Company was closed due to reduced profits due to workers from Japan and their families going back and forth from Indonesia to Japan too often. However, the Company declared a loss but could not prove the audit results. Workers in the finance and marketing departments stated that the Company did not lose any orders that were always increasing. In mediation at the Sub-Department of Work, the Employer, through the Liquidator, pays the worker's rights 1 x Article 156 because the Company has lost, and the worker rejects the offer.

Through their legal counsel, workers ask to be paid 2 x Article 156 plus the shortage of the minimum sectorial wage. The worker's request is rejected by the Liquidator, giving legal power to the lawyer and always delaying the problem. The irony is that the

entrepreneur delays the Mediator's call. Although there have been frequent delays in mediation, the workers and their legal representatives are always present. The Mediator is still not willing to issue recommendations. So that time drags on, and workers need money to continue their lives. So they are forced to accept the Liquidator's wish to receive severance rights 1 x article 156 without accepting a shortage of sectoral minimum wage payments. The Liquidator then gives legal power to the lawyer and always delays the problem. The irony is that the entrepreneur delays the Mediator's call. Although there have been frequent delays in mediation, the workers and their legal representatives are always present. The Mediator is still not willing to issue recommendations. So that time drags on, and workers need money to continue their lives. So they are forced to accept the Liquidator's wish to receive severance rights 1 x article 156 without accepting a shortage of sectoral minimum wage payments. The Liquidator then gives legal power to the lawyer and always delays the problem. The irony is that the entrepreneur delays the Mediator's call. Although there have been frequent delays in mediation, the workers and their legal representatives are always present. The Mediator is still not willing to issue recommendations. So that time drags on and workers need money to continue their lives. So they are forced to accept the Liquidator's wish to receive severance rights 1 x article 156 without accepting a shortage of sectoral minimum wage payments, so that time drags on and workers need money to continue their lives. So they are forced to accept the Liquidator's wish to receive severance rights 1 x article 156 without accepting a shortage of sectoral minimum wage payments. So that time drags on and workers need money to continue their lives so that they are forced to accept the Liquidator's wish to receive severance rights 1 x article 156 without accepting a shortage of sectoral minimum wage payments.

### **3.2 The Liquidator's Obligation to Manage and Settle Assets**

According to the Big Indonesian Dictionary, liquidation is the "dissolution of a business as a legal entity, including payment of obligations to creditors and distribution of remaining assets to shareholders (Persero)"[47]. Bank liquidation is the act of settling all bank rights and liabilities as a result of the cancellation of a business license and the dissolution of a bank's legal organization [48].

Article 142 paragraph (2) of the Limited Liability Company Law specifies that after the Company's dissolution for the reasons stated in Article 142 paragraph (1), liquidation must be carried out by the Liquidator or curator. Within 30 (thirty) days of the Company's dissolution date, the Liquidator shall inform all creditors in the Newspapers and State Gazette of the Republic of Indonesia. Furthermore, in order for the Company's liquidation to be published in the register of companies, the Liquidator must notify the Minister of its dissolution. Paragraph 147 of the UUPT (1) The dissolution of the Company does not apply to a third party if creditors and the Minister have not been notified. If the Liquidator fails to make the notification, the Liquidator is jointly and severally accountable for the losses suffered by the third party [49]. Article 148 of the UUPT, paragraphs (1) and (2).

The liquidator's duties in carrying out the liquidation procedure for the settlement of the Company's assets must involve the fulfillment of [50]:

- (1) Asset and debt recording and collection for the Company
- (2) Publication in the Republic of Indonesian newspapers and the State Gazette of the plan for the distribution of assets arising from the liquidation.
- (3) Creditor payments
- (4) Distribution of residual liquidation assets to shareholders.
- (5) Other measures that must be conducted in order to carry out the asset settlement.

If the liquidator believes that the Company's debts exceed its assets, the liquidator must file a petition for bankruptcy on behalf of the Company, unless the laws and regulations require otherwise, and all creditors whose identities and addresses are known agree to settle the settlement outside of bankruptcy [51].

The creditor who submits the claim can be made in the event that there is residual wealth resulting from the liquidation, which is intended for shareholders. Thus the shareholders are obliged to return the remaining wealth of the proceeds in proportion to the amount received against the amount of the claim [52]. Conditions that occur, Liquidators are not willing to pay creditors' bills according to applicable regulations. Based on the description above, the liquidator does not carry out its obligations to the workers (creditors) as formulated in Article 149 paragraph (1) letter c. In the opinion of Teguh Prasetyo, if the law is the same as justice, then if there is no justice, then there is no law.

### **3.3 The Government's Attitude Towards the Dissolution of the Company**

Based on the workers' statements and evidence submitted by the workers, the payment of wages by employers to workers is below the sectorial minimum wage of DKI Jakarta Province. The violation of the sectorial minimum wage is subject to sanctions as formulated in Article 185 of the Manpower Act. Every company that will close its business activities 30 (thirty) days prior to closing is obliged to report the closure of the said company to the Government. One of the requirements is how to resolve the rights of workers. Violation of the said article will be subject to sanctions as formulated in Article 6 paragraph (1) of Law Number 7 of 1981. There is no attitude by the labour inspector on violations committed by entrepreneurs. In this case, the labour inspector does not exercise his authority.

## **4 Conclusion**

- (1) Payment of employees' rights is not in conformity with Article 164 of Manpower Law Number 13 of 2003.
- (2) The liquidator fails to fulfill its commitment to pay workers' entitlements under Article 164 of the Manpower Act.
- (3) Labour inspectors do not impose sanctions on employers who do not report company closures and violations of the sectorial minimum wage



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