

THE CONCEPT OF SHAREHOLDERS' RESPONSIBILITY IN INDIVIDUAL COMPANIES TOWARDS THIRD PARTIES

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ABSTRACT

To provide convenience, the government creates regulations to develop the community's economic potential; one of them is to provide a way for Micro and Small Enterprises (MSEs) by setting up a legitimate substance within the frame of a constrained obligation company. A limited liability company to MSEs is also called an individual company because it only consists of one individual who acts as a shareholder and a executive without any commissioners. Its establishment was pretty easy, without using a notarial deed; thus, it did not have an Articles of Association (AOA). An individual company was valid to become a legal entity based on a statement letter ratified by the Minister of Law and Human Rights. However, indeed, the shareholder would be hard to prove that he had exercised his authority based on the corridor or carried out the principle of fiduciary duty. Through this research, researchers aimed to find out the concept of shareholder responsibility in individual companies towards third parties. The inquire about advantage was to discover out the concept of shareholder obligation in person companies towards third parties and to demonstrate the rule of guardian obligation based on the clarification of Article 153 letter J of the Constrained Obligation Company area of Law Number 11 of 2020 concerning Work Creation (Alluded to as the Work Creation Law), wich isolated the company and individual obligations when company's insolvency happened. The inquire about required to be considered encourage since the author of an person company was the sole proprietor that possibly experienced troubles in demonstrating that the author had carried out his obligations as a chief. The inquire about strategy utilized was standardizing legitimate composing with a statutory direction approach. The inquire about comes about uncover that it is essential to have a moment party exterior the author of the Person Company to confirm his legitimacy and movement whether they are by the standards of Guardian Obligation or not.

Keywords: Fiduciary Duty, Individual Company, Evidence, Engagement, Third Parties.

INTRODUCTION

Many business opportunities in this modern era motivate economic actors to develop their businesses further. One of the most attractive business developments for the business actor is establishing a Limited Liability Company. Limited Liability Companies have long been an alternative for businessmen because of their limited liability and the separation between personal assets and Company assets. Furthermore, as a form of government support, Law Number 11 of 2020 concerning Work Creation (too said as the Work Creation Law) was built with one of its substances revising Law Number 40 of 2007 concerning Restricted Obligation Companies (moreover specified as the PT Law) within the frame of the foundation of a Restricted Risk Company on Smaller scale and Little Ventures (moreover specified as person companies). The government attempts to facilitate the economic actors to build a business with limited capital, even the business owners only consisting of themselves (Diyan Isnaeni, 2021: 208).

Based on the regulations in the Job Creation Law, limited liability companies nowadays can take the form of legal entities by being founded by only one person and must meet the criteria for Micro and Small Enterprises (MSEs). This sole ownership means that the only shareholder will also serve as a Director with the separation of personal assets and the Company without a commissioner in it. Because it has been incorporated as an Individual Company, like a limited liability company, it has civil responsibilities, i.e., in terms of carrying out legal relations with third parties; it is not burdened with responsibilities that exceed the nominal value of the shares he owns (Ukilah Supriyati, 2020: 129).

Based on Government Regulation Article 3 Number 8 of 2021 concerning Company- Authorized Capital, business activities in an Individual Company are required to have company-authorized capital. In a Limited Liability Company, the shareholders have control over the management of funds by the Directors through the General Meeting of Shareholders (GMS). These shareholder's controls can cause the shareholders to be responsible if a loss occurs in the Limited Liability Company (Binoto Napdap, 2009: 61). However, a different substance between a limited liability company and an individual company will potentially result in problems, i.e., the responsibility of shareholders when engaging with third parties. Because an Individual Company only consists of one person, shareholders who act as Directors have a dual role. The Board of Directors control over shareholders is not working properly; how can someone control activity by himself.

This research background can reveal that the shareholders of an individual company will be hard to prove that they have exercised their authority following the corridor or carried out the principle of fiduciary duty. Consequently, based on the clarification over, the creators are inquisitive about conducting a investigate entitled "The Concept of Shareholders' Obligation in Person Companies towards Third Parties".

RESEARCH RESULTS

In a Common Law legal system concept, an individual company is well-known as a single business organization, i.e., in which only one-party acts as a seller. The capital provided also comes from their assets or the bank loans' outcomes. This individual company model has also been widely implemented in the United Kingdom (UK), and European Union (EU), as well as in various other Southeast Asian countries such as Malaysia and Singapore (Aziz Muhammad Faiz, 2020: 94).

One form of single Company that involves many people is Micro and Small Enterprises (MSEs). Heretofore, before the issuance of the Job Creation Law, MSEs were not yet legal entities and were still in the form of informal business entities (Chalim, 2022: 27). According to the World Bank, MSEs will become more stable in running their business formally to get better access to funding. In this case, the government, through the Job Creation Law, is attempting to realize the development of the MSE business into a legal entity's company.

With respect to engagements' duty with third parties, in Article 153 letter J of the Work Creation Law, which too has the same substance as Article 3 passage (1) of the Restricted Obligation Company Law, it has been clarified that the shareholders of the Company for Miniaturized scale and Little Undertakings (too specified as person companies) are not by and by mindful for the engagement made on sake of the Company and not dependable for the Company's misfortunes surpassing the offers claimed. This partition of obligations got to be known as the Isolated Legitimate Substance rule, which characterizes the rights and commitments of the isolated company from the rights and commitments of shareholders and their administration when a company encounters misfortunes (Maulana Hasanudin Hidayat, 2019: 68).

However, based on applicable regulations, there may be exceptions to the concept of limited liability, i.e., conditions when the Company's responsibility becomes the responsibility of the shareholders personally. Personal wealth gets carried away when the Company's wealth cannot cover the Company's debt. Then, this term is known as Piercing the Corporate Veil (Chatamarrasjid, 2003: 17). The existence of the principle of Piercing the Corporate Veil opens the curtain between the limited responsibilities of shareholders; thus, the limitation of responsibility in the Company's activities is not absolute by observing the causal factors removes the limitation of responsibility itself (Sandra Dewi, 2017: 254).

Concerning "Piercing the Corporate Veil" in person companies, the shareholders are capable to the Company's banks (third parties) as a result of the shareholders' activities, which caused the Company's resources to endure misfortunes and were incapable to fulfill their commitments to leasers.

Meanwhile, in a Limited Liability Company, with commissioners carrying out supervisory activities for the Directors in procuring the AOA, the principle of good faith can be fulfilled. Negligence caused by the Board of Directors based on the results of supervision by the commissioners provides validation of whether shareholders are performing their jobs as well as possible (Fiduciary duty). However, what if bankruptcy occurs in an individual company whose organs consist of shareholders as well as without supervision from the commissioners?

A person is said to be capable to carry out fiduciary duties when he can separate personal interests from common interests. In general, the fiduciary duties of directors are divided into two main components, namely (Munir Fuady, 2002: 33):

1. Duty of Care: the executives must act judiciously in making all choices and company arrangements. In approach decision-making, the board of chiefs must still consider all accessible data legitimately and reasonably.
2. Duty of Loyalty: the executives are continuously capable to stand up for their company interface. Executives endowed by the Company must act within the interface of shareholders, work for the interface and targets of the Company, and act by prioritizing the interface of the Company over individual interface.

Moreover, he is said eligible to carry out his Fiduciary duties, indeed, with supervision from parties outside himself. Let it alone without commissioners, with shareholders acting as directors at the same time, will be complicated to prove that the founders of an individual company have not violated the principles of fiduciary duty. Indeed, it will become an issue in the future because a company should not be controlled by one party. The existence of minority shares is essential as a counterweight. If it is only done by one party, then the rules regarding minority share ownership do not exist. The concept of two shareholders is needed for consistency and limited liability to the Company.

Even when viewed from the preparation of financial statements in Article 10 of Government Regulation Number 8 of 2021 concerning Company-Authorized Capital; its validity cannot be proven if there are no parties outside of themselves to oversee the Company's activities. Of course, no party wants to be harmed by the creditors of the Company (third parties) or the founders of the individual Company.

CONCLUSION

A second party outside of shareholders, directors, is required when engaging with third parties. In the absence of a second party between the agreements held with legal consequences, the author of an Person Company may be subject to Puncturing the Corporate Shroud by appointing the Company's duty, which ought to be restricted to being open, and the obligation of the originator of the Person Company by and by.

Article 153 letter J of the Restricted Risk Company segment of the Work creation law is futile in case the author of an person company cannot demonstrate that he has carried out his obligations as a shareholder and executive to the most excellent of his capacity. This gap creates the need for alignment between one regulation and another. Sole ownership in an individual company will still be a debate that is difficult to resolve because it is difficult to detect evidence in all activities carried out because it does not involve other parties outside of itself.

REFERENCES

- Ais, Chatamarrasjid. (2003). Pengaruh Prinsip Piercing the Corporate Veil dalam Hukum Perseroan Indonesia. *Jurnal Hukum Bisnis*, Vol. 22, No. 6.
- Chalim, M.A., Listyowati, P.R., Hanim, L. and Noorman, M.S. Chatamarrasjid. (2003). Pengaruh Prinsip Piercing the Corporate Veil dalam Hukum Perseroan Indonesia. *Jurnal Hukum Bisnis*, Vol. 22, No. 6.
- Dewi, Sandra. (2017). Prinsip Piercing the Corporate Veil dalam Perseroan Terbatas Dihubungkan dengan Good Corporate Governance. *Jurnal Hukum Respublica*, Vol. 16, No. 2.
- Faiz, Aziz Muhammad. (2020). Mewujudkan PT Perseorangan bagi Usaha Mikro Kecil melalui Rancangan Undang-Undang Cipta Kerja. *Jurnal Rechtvinding*, Vol. 9, No. 1.
- Hidayat, Maulana Hasanudin. (2019). Badan Hukum, Separate Legal Entity dan Tanggung Jawab Direksi dalam Pengelolaan Perusahaan. *National Journal of Law*, Vol. 1, No. 1.
- Isnaeni, Diyan. (2021). Peran Notaris dalam Pendirian PT Usaha Mikro dan Kecil. *Jurnal Hukum dan Kenotariatan*, Vol. 5, No. 2.
- Supriyatin, Ukilah. (2020). Tanggung Jawab Perdata Perseroan Terbatas (PT) sebagai Badan Hukum. *Jurnal Ilmiah Galuh Justisi*, Vol. 8, No. 1.
- Fuady, Munir. (2002). *Doktrin-Doktrin Modern dalam Corporate Law dan Eksistensinya dalam Hukum Indonesia*. Bandung: PT Citra Aditya Bakti.
- Marzuki, Peter Mahmud. (2005). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Napdap, Binoto. (2009). *Hukum Perseroan Terbatas*. Jakarta: Jala Permata Aksara.
- Government Regulation Number 8 of 2021 Concerning Company-Authorized Capital.
- Law Number 11 of 2020 Concerning Job Creation.
- Law Number 40 of 2007 Concerning Limited Liability Companies.

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