

The Bankruptcy Aspect in Single Shareholder Company After Indonesian Job-Creation Act

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ABSTRACT

The government aims to create conducive business conditions with the Job Creation Act (UUCK). One of the contents of the UUCK is to amend several article in the Limited Liability Company Law and present a breakthrough, namely Individual Company for MSME's that can be used as a form of breakthrough in the development of the national economy. This research is a normative juridical research. This study concludes that in the legal aspects of bankruptcy in Indonesian with single shareholders. Based on the principle of piercing the corporate veil, a single share holder can also follow the bankruptcy mechanism as is the case with Limited Liability Companies in general. Because the person who have single share holder must be segregate assets because single share holder can be classified as a legal entity.

Keywords: *Bankruptcy, Accountability of the Company, Single Shareholder*

1. INTRODUCTION

The progress of a country can be reflected in the existence of a policy made to continuously improve the welfare and prosperity of its people. In Indonesia itself, it has become part of the country's goals as stated in the fourth Aline of the opening of the 1945 Constitution, namely "...advancing the general welfare..." so that an equitable prosperity and prosperity is a sacred goal of the Indonesian people. Taking into account the objectives of the country, in the business world, which is an activity that drives the economy to bring wind which is very important for the nations civilization. Because the business world, one form of which is to establish a company, certainly generates taxes for these states, becomes a foundation for people looking for fortune because it creates jobs for many people, and can lead the state and society to increase knowledge and technology that refers to the state towards modernization and development [1].

The existence of a company plays a very important role in advancing a community, region and country. So that it can create social welfare. This is with the existence of a company in an area, it will be able to absorb labor [2]

The government considers that a new policy permit is needed to include goals for economic progress, especially in the case of Covid 19. One of the strategic efforts made in the context of realizing large employment opportunities is carried out through 3 (three) efforts, namely: (a) Increasing Investment; (b) Strengthening MSMEs; and (c) Improving the quality of Indonesia's human resources (labor). Then the Government formulated a political law called the Job Creation Law with Law Number 11 of 2020 concerning Job Creation (UUCK).

The government aims to create conducive business conditions with the Job Creation Act (UUCK). One of the contents of the UUCK is to amend several articles in the Limited Liability Company Law and present a breakthrough, namely Individual Company or Single Share Holder for Micro, Small, and Medium Enterprises or MSMEs that can be used as a form of breakthrough in the development of the national economy. Perseroan in general have a separation of assets, and for now we will examine the separation of wealth from single shareholder. Because the existence of a single shareholder is something new, we are interested in examining the bankruptcy aspects of a single shareholder.

2. METHODS

2.1. Data

As a normative legal research, data use in this research are secundar data, that are collected through literature review. The main data are primary legal source, that consisted of law other the regulation number 37 in 2004, law number 11 in 2020, and regulation number 40 in 2007.

2.2. Method

Data obtained are analysed using qualitative method. Discussions are made to understand the conception the aim of the research to the bankruptcy aspect in single shareholder company after Indonesian job-creation act.

3. FINDINGS AND DISCUSSIONS

The times have also brought about the emergence of various kinds of changes in the economic world. In ancient times, humans only carried out their economic life by means of a barter, the increased to make buying and selling, and known money as a medium of exchange. Then the traditional buying and selling system is known as the market system, the market system has developed from a traditional one to a mall or supermarket and so on. Likewise, with the business world which has also experienced developments in various forms of business, ranging from civil partnership, firm, CV (Commanditaire Venotschap), limited liability company, and the newest in Indonesia in an individual company as we known single shareholder.

Single shareholder as a trend in the development of corporate law in the world now is being adopted in Indonesia. So, this must be developed in accordance with its objective, which is to make it easier for Indonesians who want to try to establish a business as a way of achieving prosperity. It is necessary that the concept of single shareholder company implemented without destroying the principle of limited liability as a fundamental of the company and which differentiates it from other business entities, and it is necessary to pay attention to the separation of individuals and company (separate legal personality) which is also a special character of a limited liability company, the essence of which is that a The company in this case is a limited liability company, has a personality that is different from the person who created. So, the implementation this single shareholder in Indonesia, must be careful.

And the idea from the government aims to create conducive business conditions with the Job Creation Act (UUCK). One of the contents of the UUCK is to amend several articles in the Limited Liability Company Law and present a breakthrough, namely Individual Company or Single Shareholder for Micro, Small, and Medium Enterprises or MSMEs that can be used as a form of breakthrough in the development of the national economy. Perseroan in general have a separation of assets, and for now we will examine the separation of wealth from single shareholder. Because the existence of a single shareholder is something new, we are interested in examining the bankruptcy aspects of a single share holder

Through this UUCK, there is a mechanism that is considered new even though it is not, where there has been a thought that the establishment of a limited liability company is a sero in Indonesian or capital association, the consequences of which is the establishment and ownership of shares of a company which is obliged by two or more people, as in the Company Law Article 7 paragraph (1) say its "Companies are established by 2 (two) or more persons with a notary deed drawn up in Indonesia." However, it can be said that it is not a new thing because in the next provision in Article 7 paragraph 7 say that the company law states that "The provisions which require the Company to be established by 2 (two) or more persons as referred to in

paragraph (1) and the provisions in paragraph (5) as well as paragraph (6) does not apply to:

- a. Persero, all of whose share are owned by the state; or
- b. Companies that manage stock exchanges, clearing and guarantee institutions, depository and settlement institution, and other institution as regulated in the Law on Capital Markets.

But in this UUCK, a regulation drafted regarding the establishment and operation of a limited-liability company for MSME's by one funder or single shareholder.

The government considers this new breakthrough as providing convenience, protection and empowerment to MSME's and cooperatives. However, the common question is what about the responsibilities of the shareholder in single shareholder company.

Then this new policy emerged, namely the presence of UUCK by allowing MSMEs to establish an Individual Company with One Shareholder. in order to create economic growth which is also very fast in its business aspect and attracts many investors and becomes one of the most active markets in attracting investors [3].

As we know, In Indonesia itself, if we refer to the Company Law, it provides regulations on the principle of piercing the corporate veil or lifting the veil, which means penetrating the company's veil or opening the company's veil.

The piercing the corporate veil means to tear/ rip/ penetrate, jilbab means curtain/ cloth and company means the company. Therefore, the dictionary term that piercing the corporate veil means to remove the corporate curtain. Because of that online term company hijab means to reveal the corporate curtain. Whereas in corporate law science is a principal theory which is defined as a process to impose responsibility on other people's shoulders, by a legal act committed by the perpetrator's company, regardless on the fact that the company is actually being carried out by the perpetrator's company.

In the Law Number 40 of 2007 concerning Limited-Liability Companies also recognize the application of the piercing the corporate veil doctrine by imposing this responsibility on the following parties:

- (1) The burden of responsibility is transferred to the shareholder;
- (2) The burden of responsibility is transferred to the Board of Directors and Commissioners.

The board of director as an organ of the company is fully responsible for the management of the company for the interest and objective of the company and represent the company both inside and outside the court in accordance with the provisions of the articles of association.

Bismar Nasution an expert in corporate law expressed his opinion that

"The Board of Director has an executive position in the Company, its actions are limited by the articles of association of the company."

Limited Liability Company as a legal entity in carrying out such legal actions through its management, namely the

Board of Director without a management, the legal entity will not be able to function. The dependence between a legal entity and a management is the reason why a legal entity and a Board of Directors are born fiduciary duties theory where the management is always a party who is trusted to act and uses their authority only for the benefit of the Company.

And the researcher think, in the single shareholder adheres to the principle piercing the corporate veil that separating the responsibilities of the company's assets from personal assets.

This single shareholder has developed as a trend in the development of corporate law in the world that is now being adopted in Indonesia, which must develop in accordance with its objective, namely to facilitate Indonesian people who want to try to establish a business as a way of achieving prosperity. It is necessary that this single shareholder concept be implemented without destroying the principle of limited liability as a fundamental of the company and that differentiates it from other business entities, and it is necessary to pay attention to the separate legal personality which is also a special character of a limited liability company, the essence of which is that The company in this case is a limited liability company, has a personality or personality that is different from the person who created it [4].

In Indonesia itself, if we refer to the Company Law, it provides regulations on the principle of piercing the corporate veil or lifting the veil, which means penetrating the company's veil or opening the company's veil. [5].

Indeed, until now there has not been any regulation regarding the establishment of a single shareholder. However, the author is of the opinion that ideally this individual company registration should not only fill out the formular electronically to the Minister. However, the statement letter made, and the shares to be invested in the company must also be made legally and validly, not only made by the person of the individual company founder to avoid legal vacancies that may occur in the future. The letters should be made before a notary as a public official representing the state. And the role of this notary can also be used as the first legal counseling effort for the prospective founders of the company [6]

This also relates to a limited liability company which is a legal subject which of course will result in this limited company having the right to become the holder of rights and obligations, including being the owner of a certain object or property. Because a limited liability company is something that is born as a legal entity, created through a legal process, it is referred to as a legal entity in an artificial form created through a legal process.[7] This company is considered as a human being who can be held accountable if it commits a legal act. So it should also be necessary to get supervision from a notary in making the artificial person. [8]

Article 3 Paragraph (1) of Law Number 40 of 2007 regulates the principle of limited-liability or *limitatief aansprakelijkheid*, while Article 3 Paragraph (2) regulates the limits on the principle of limited liability.

However, with the presence of business traffic, of course, it will not always generate profit. One of them could be

bankruptcy. especially during Covid 19. Overtimes a Limited Liability Company (PT) is declared bankrupt, the assets of the Limited Liability Company will be in general confiscation and the Limited Liability Company will lose its right to manage its assets. This will have an effect on existence The PT, where the management must be held personally accountable according to the principles of Piercing the Corporate Veil.

One way to overcome debt and credit settlement is through the bankruptcy and suspension agency Debt Payment Obligation (PKPU) with a mandate from 37 of 2004 concerning Bankruptcy and Delays Debt Payment Obligations.

This definition of bankruptcy is in line with nature bankruptcy, namely that the bankruptcy results in confiscation general assets of the debtor as stipulated Article 21 of the Bankruptcy and Suspension of Liability Law Payment of Debt as a consequence of the provisions of Article 1131 and 1132 of the Civil Code. bankruptcy is when the debtor is unable to perform payments against debts owed by its creditors. Circumstances not able to pay is usually due to financial difficulties (financial distress) from the debtor's existing business experience setbacks [9].

There are several factors that are necessary bankruptcy arrangements and postponement of debt payment obligations, namely [10]:

- a. Seizure of debtor's assets if deep the same time there were several creditors who collect receivables from debtor.
- b. Creditors holding guarantee rights material that claims its rights by selling property debtor without paying attention the interests of the debtor or creditors.
- c. the cheating done by one of the creditors or the debtor himself.

Bankruptcy is a way get out to get out of debt problems accounts receivable that crush a debtor, where the debtor is no longer have the ability to pay again debts to its creditors. If the inability to pay debt that is due is recognized by debtor, then steps that can be taken by the debtor is by submitting a request determination of bankruptcy status against him alone, or by way of status determination bankruptcy issued by the court if it has been proven that the debtor indeed have been unable to pay debts that are due and billable.

But whenever the company make a single shareholder company, with piercing the corporate veil there are have another change to save the own asset exclude asset in company. When MSMEs are referred to as individual individuals which are also legal entities or are called artificial person, namely a legal entity which was deliberately created. With thus, a Limited Liability Company is an independent legal subject who has rights and obligations, basically is no different from rights and obligations human legal subject. [10] Having such a doctrine also helps to distinguish from anything human can do not prohibited by law, meanwhile legal entities can only do what that is explicit or implicit permitted by law and or budget basically. Accordingly, mean and the purpose of the

Limited Liability Company has 2 (two) aspects, on the one hand it is source of authority to act for Limited Liability Company and on the other hand being a limitation of scope limited liability company acting authority concerned. [10] Based on the theory and doctrine of limiting personal assets and company assets, the author gives his view that when this single shareholder goes bankrupt, the assets that will enter the bankruptcy bundle are only the assets that exist and are separated from the company, so that the amount will not reach the assets private than the owner of the single shareholder.

4. CONCLUSIONS

So that based on the principle of piercing the corporate veil, a single shareholder can also follow the bankruptcy mechanism as is the case with Limited Liability Companies in general. Because the person who have single shareholder in the establishment the single shareholder must be segregate assets because single shareholder in Indonesia now can be classified as a legal entity so the regulated same as Limited-Liability Company as a legal entity.

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