

Responsibility of the Board of Directors for the Activities of a Limited Company That Does Not Have Legal Entity Status

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ABSTRACT

This paper talks about the duty of the chiefs on the exercises of the restricted responsibility organization that is not yet legitimate status. This paper plans to distinguish and dissect the lawful results and duties of the overseeing chiefs who have restricted risk legitimate status. Kinds of exploration in this examination, utilizing the regulating idea of the exploration clear. This paper introduced an examination that from a restricted responsibility lawful status, then, since that time the Law treats investors and chiefs separated from the restricted obligation organization itself. Subsequently, investors who do not have a premium in a restricted risk organization riches, likewise not liable for the organization's obligations.

Keywords: *Corporation, Responsibility, Limited company.*

1. INTRODUCTION

One piece of public advancement is a financial improvement that understands individuals' government assistance dependent on the 1945 Constitution of the Republic of Indonesia (UUD 1945). This is expressed in Article 33 section (4) of the 1945 Constitution, which expresses that:

“The National Economy is coordinated dependent on financial majority rule government with the standards of fellowship, effectiveness, equity, manageability, ecological knowledge, freedom and by keeping an equilibrium in huge, medium and independent company exercises in an association design.”

Financial improvement essentially cannot be isolated from the lawful turn of events, so lawful advancement strategies are done with the monetary turn of events, specifically by adjusting laws and guidelines that offer help to financial exercises in confronting the time of streamlined commerce without hurting the public interests.[1]

The advancement of the business world today has developed so quickly, so finance managers who work together will make the most of the chances that exist. In this condition, there are a few options that should be possible by the money manager, in particular through existing business substances and as yet being kept up

with by opening branches in regions/areas that are viewed as potential to work together and the individuals who do or set up a business element as a Limited Liability Company (PT) in light of the arrangements of enactment, to be specific the Law of the Republic of Indonesia Number 40 of 2007. This will affect the business world, particularly if the conversation is identified with the issue of common risk of a legitimate element. The advancement of the business world today has developed so quickly, with the goal that finance managers who work together will make the most of existing freedoms. In this condition, there are a few options that should be possible by the finance manager, in particular through existing business elements and as yet being kept up with by opening branches in regions/areas that are viewed as potential to work together and the individuals who complete or build up a business element as a Limited Liability Company (PT.) because of the arrangements of the enactment, in particular, the Law of the Republic of Indonesia Number 40 of 2007. This will affect the business world, particularly if the conversation is identified with the issue of common risk of a legitimate element.

Limited Liability Company is one of the organizations that is relied upon to be a way to work on the financial turn of events. Limited Liability Company is a type of organization set up to run with a specific organization capital isolated into shares. The investors (Persero) partake in taking at least one offer and do lawful

activities made by the joint name with no duty own obligation regarding the organization's approvals.[2]

As indicated by Article 1 point 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter alluded to as UUTP), what is implied by Limited Liability Company is a Legal Entity which is a capital union set up dependent on an understanding, directing business exercises with approved capital which is isolated into shares and satisfies necessities applied in this Law and its executing guidelines.

The decision of Limited Liability Company as a type of organization over different structures is because of two reasons: initial, a regional risk organization is a relationship of capital, and second, a regional responsibility organization is a legitimate autonomous element. As a capital affiliation, it is simple for investors of a restricted responsibility organization to move their offers to others. As an autonomous lawful substance dependent on the Company Law, the obligation of offers is restricted.

As a legitimate substance, a restricted risk organization has attributes, among others: the presence of discrete resources, having a particular reason, having its advantages, and the presence of a collaborative organization.[3]

The legitimate substance status of a restricted risk organization is gotten during the time spent its foundation to have the option to understand its exercises as an autonomous business element. As indicated by Article 7 point (1) of the Company Law, it is resolved that a restricted risk organization is set up by 2 (two) or more people with a notarial deed drawn up in the Indonesian language. The foundation and notarial deed of foundation of a restricted responsibility organization should be endorsed by the Minister of Law and Human Rights (HAM).

The deed of foundation of a restricted responsibility organization as a legitimate deed, which at the hour of its assembling was stayed away from by the gatherings who have consented to tie themselves in the foundation of a restricted obligation organization, it cannot be supposed to be a lawful substance before the deed of the foundation is endorsed by the Minister of Law and Human Rights.

A regional responsibility organization that has been with a legitimate substance will turn into a free foundation, and as an ally of rights and commitments, can complete lawful activities both in court and in court and have different resources from the administration and originators. Likewise, they are lawful subjects like people, so the authors who are additionally investors cannot be considered responsible for more than the ostensible worth of the offers they own.

In the act of the business world, deviations are regularly made by the authors of a restricted responsibility organization, for example, not consenting to the arrangements of the enactment concerning the strategies and methods for building up a restricted risk organization where the restricted obligation organization has completed its exercises however has not yet gotten endorsement as a lawful substance. Fundamentally can

make misfortunes the restricted responsibility organization itself.

In light of the foundation above, defined a few issues will be examined in this investigation, to be specific: what are the duties of the Board of Directors of a restricted risk organization as the supervisor of the organization's exercises, and how are the game plans concerning the foundation of a restricted obligation organization to have the situation with a lawful element?

2. METHODS

This composing utilizes a regulating lawful examination strategy, particularly an interaction to decide Law and order, legal guidelines, and lawful teaching to answer the lawful issues faced.[4] The essential lawful materials are enhanced by optional legitimate materials, to be specific lawful books, logical lawful works of exploration results and other lawful writings identified with the issues contemplated, concerning the investigation of lawful materials, the gathering of equivalent laws and guidelines, the guidelines in the pecking order underneath them. Then, at that point, dissected utilizing deductive, inductive rationale utilizing the hypothesis of assurance and legitimate security.

3. RESULT AND DISCUSSION

3.1 Legal Consequences on Limited Liability Companies that are Not Legal Entities

Indonesia is a legitimate express that perceives everybody as illegal, which implies that everybody is perceived as a lawful subject. Article 27 of the 1945 Constitution specifies that all residents have a similar situation in Law and government and are obliged to maintain the Law and government no matter what.

As indicated by Subekti, singular Law is guidelines seeing people as subjects in Law, guidelines concerning the capacity to have rights and act freely to do their privileges and things that influence those abilities.[5]

Individual Law, as indicated by Van Apeldoorn, purusa law, is the entire guideline of purusa or lawful subjects. Purusa law has legal position guidelines (*Rechtbevoegdheid*) and the power to act (*handelingsbevoegdheid*).[6]

Law directs relations between the citizenry and between legitimate subjects. The legitimate subject is who can have the right and is fit for acting under the Law or who is proficient as indicated by the Law to have the right at the end of the day. Legitimate subjects have a vital position and job in Law, particularly respectful Law because lawful subjects can have lawful power. In the field of common Law, perceiving lawful subjects as a component of the lawful class cannot be disregarded because lawful subjects are essential ideas and understandings (*idea en Begriff*).

Individuals as lawful subjects are recognized in 2 (two) implications, namely: 8 a. *Natuurlijke persoon* or *menselijk persoon*, who is known as an individual in

human structure or individual human. b. Rechts persoon is an individual as a legitimate substance or an individual made by Law in fiction or persona ficta. In the meantime, legitimate substances (Rechts persoon) are likewise separated into two sorts, in particular:

- 1) A lawful public substance (Publiek Rechts Individual) whose nature is viewed as a component of public interest taken care of by the state.
- 2) Private lawful substances (privaat Rechts persoon) are components of individual interests in legitimate private elements.

Of the different organizations in Indonesia, like firms, regional associations, cooperatives, etcetera, the PT type is the most well-known structure. It is usually said that the PT is the predominant type of organization.

As per Law Number 40 of 2007 concerning Restricted Obligation Organizations. "Organization" alludes to its capital which comprises of property or offers. While "restricted" alludes to the duty of the investors, which does not surpass the ostensible worth of the offers bought in and claimed. An organization is a legitimate subject who can make lawful moves or activities or make a commitment, which is restricted to things unequivocally managed in the articles of an organization's relationship.

The quintessence of the organization, in this UUPT it is accentuated that the organization is a legitimate element which is a capital association, set up dependent on an understanding, leading business exercises with approved capital which is isolated into shares and satisfies the prerequisites specified in this Law and it is carrying out guidelines to get quick administrations. This UUPT manages the methodology for:

1. Accommodation of utilization and allowing of legitimate substance status
2. Accommodation of utilization and endorsement of revisions to the articles of affiliation
3. Accommodation of warning and receipt of notice of changes to the articles of affiliation or potentially notice and receipt of notice of different changes in the information, which is helped out through data innovation administrations for the electronic, managerial arrangement of lawful elements, notwithstanding the chance of utilizing manual frameworks in specific conditions.

A regional responsibility organization is an organization dependent on Law. This makes the organization uncommon, contrasted with other business elements, if CV, UD, or Firma must be a business element. Nevertheless, the organization is supposed to be a legitimate substance. Accordingly, the organization is additionally a legitimate subject that can remain solitary, be arraigned, and sue under the watchful eye of the court, which is addressed by its approved organ. On the off chance that at least two individuals will set up a PT, an

arrangement is required. A Deed of Foundation likewise contains the articles of affiliation and even runs the organization's activities. However, there has been no specification from the Menkumham, seeing its status as a PT.[7]

In Article 7 point (4) of Law 40/2007, it is expressed, "The organization acquires the situation with a legitimate substance on the date of the issuance of an ecclesiastical pronouncement in regards to the legitimization of the organization's lawful element." To get the situation with a Legitimate Substance, it should initially be gone before by the accommodation of the name of the organization, then, at that point, present an application to the clergyman for endorsement in regards to the foundation of a lawful element of the organization which is done mutually by the originators or approval to a public accountant which is helped out electronically through the Lawful Element Data Framework.

The situation with lawful activities done by organizations that have not gotten lawful element status can be seen from a few angles dependent on the Law on PT. Lawful activities for the organization that has not gotten the situation with a lawful element may just be done by all individuals from the Governing body along with all authors, and all individuals from the Leading body of Chiefs of the Organization and every one of them are together and severally liable for such legitimate activities. Besides, the legitimate activities completed together will turn into the lawful duty of the organization after the organization has acquired the status as a lawful entity.[8]

The author does the lawful activity in the organization's interest, which has not gotten the situation with a lawful substance. The lawful activity is the obligation of the originator concerned and is not restricting on the organization. Furthermore, this legitimate activity is just restricting. It turns into the organization's obligation after the lawful activity is endorsed by all investors in the GMS, which is gone to by all organization investors. The GMS being referred to is the primary GMS and is held no later than 60 days after the organization has acquired the assurance as a lawful substance.

It is extraordinary to assume that the organization has gotten the status as a lawful substance, and the organization naturally becomes the legitimate subject itself. Hence, the activities taken by the organization's organs are the organization's duty as long as they do not struggle with the pertinent laws and guidelines. Moreover, with the investors, the investors of the organization are not mindful by and by or for the commitment made for the organization and are not liable for the deficiency of the organization in overabundance of the offers claimed, aside from:

1. The prerequisites of the organization as a lawful substance have not been or alternately are not met;
2. The investors concerned either straightforwardly or by implication in

dishonesty exploit the organization for their advantages;

3. The investor concerned is engaged with an unlawful demonstration submitted by the organization or;

The investors concerned either straightforwardly or by implication unlawfully utilize the organization's resources, which brings about the organization's resources being deficient in taking care of the organization's obligations.

3.2 Responsibilities of the Board of Directors for the Processing of PTs that are not yet Legal Entities

For this situation, there is a PT that has made a lawful move. Nevertheless, the actual PT has not gotten the situation with a lawful substance because, in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter alluded to as UUPT), PT is a managed business element that enjoys numerous upper hands over the type of a business element. Another, to be specific, the honest conviction of the Limited Liability Company is ensured by order of the Company Law itself. This way, the PT makes lawful moves for the organization, although the PT is not yet a lawful entity.[10]

The obligations of the directorate fundamentally go connected at the hip with the presence, obligations, authority of rights. After getting the endorsement from the Minister of Law and Human Rights (HAM), the PT is lawful as a legitimate substance and becomes itself and can go into arrangements. The resources of the organization are isolated from the resources of the proprietor. Since a PT has a situation with a lawful substance, from that point forward, the Law treats investors and the executives (chiefs) independently from the actual PT. In this way, investors who have no revenue in the resources of the PT are likewise not answerable for the obligations of the organization or PT. As a legitimate substance, on a fundamental level, PT can have every one of the rights and commitments that can be possessed by every person, except for things that are close to home, which must be done by people who are in a specific relationship, with PT.

The obligations of the directorate fundamentally go inseparably with the presence, obligations, authority, rights, and commitments appended to them. An *authority* is a right that is acquired after satisfying certain conditions. An authority does not remain solitary. That authority is consistent as a trade-off for commitments that are its responsibility.[11] Likewise, the power and abilities of the organization's chiefs will consistently go connected at the hip with their duties as chiefs, who are approved to deal with the organization as per the points and targets contained in the articles of affiliation and other relevant arrangements.

The Company Law sticks to the rule of the assumption of the blame for the obligation of all individuals from the top managerial staff. This implies that the Law thinks about all individuals from the directorate to be mutually and severally dependable, in

particular separately and together for all misfortunes of different gatherings, which obligation applies to all activities taken by the governing body for and in the interest of the organization.

With the arrangement of the joint and a few obligations, every individual from the directorate must be a boss for one another. In any case, practically speaking, the administrative capacity through the instrument of governing rules is hard to complete. Thus, it is essential to have a particular division of obligations, specialists, and duties. With this dispersion, the issue of demonstrating that individuals from the governing body really must be answerable for activities that hurt the interests of the organization becomes simpler.

The Limited Liability Company helps out lawful activities through its administration, specifically the directorate so that the PT will not work without the top managerial staff. The reliance among PT and chiefs is the motivation behind why a trustee relationship is conceived among PT and chiefs, which is trusted to act and utilize its power just for the organization.

Risk for lawful activities in the interest of a PT that is not yet legitimately consolidated, if the activities are completed by all individuals from the top managerial staff along with all organizers and all individuals from the Board of Commissioners, even though when a lawful activity is done the Company has not yet had the situation with a lawful element, then, at that point the duty on a fundamental level turns into the obligation of together and severally responsible (*hoofdeljken gezamenlijk aansprakelijk*, mutually and severally at risk) for the lawful demonstration. As an assertion that an individual from the governing body cannot make a legitimate move for the benefit of an organization that has not acquired a lawful substance status in the interest of an organization that has not gotten a lawful element status, without the endorsement, everything being equal, different individuals from the directorate and individuals from the leading group of chiefs and their duties mutually together. Furthermore, suppose the individuals who complete lawful activities in the Company's interest have not acquired the situation with a legitimate substance. In that case, the obligation turns into the moral duty of the originator concerned, and the lawful activity is not restricting on the Company.[12]

As to duty regarding legitimate activities completed for the organization, even though the PT has not yet acquired the situation with a lawful substance. Such legitimate activities are controlled in Article 14 of the Company Law as follows:

1. Legal activities are completed by all individuals from the top managerial staff alongside all organizers and individuals from the leading body of chiefs for the organization.
2. The duty regarding activities completed for a restricted obligation organization that has not acquired the situation with a legitimate substance, for example, if a legitimate activity is done for the organization by all individuals from

the governing body along with all authors and all individuals from the chiefs, it will be their obligation to bear the duty mutually and severally even though when it is completed the lawful activity of the organization has not yet been enrolled as a lawful substance and assuming, the individual doing lawful activities in the interest of the organization has not acquired a lawful element. [13]

Concerning the type of duty of the top managerial staff, overall, the governing body can be arraigned dependent on the overall arrangements specified in the Civil Code as:

1. Requests for taking organization resources unlawfully taken by the directorate;
2. Cases for return of benefits that ought to be delighted in by the organization; and
3. Wiping out of agreements made straight by the organization through a claim in the District Court or Actio Paulina by loan bosses of the organization regarding bankruptcy.[14]

In a subsidiary claim, which implies a claim recorded by at least one investor representing and for the benefit of the organization, which claim is documented on another gathering, a case can be recorded against the directorate as follows:

1. Pay to comprise of misfortunes, expenses, and interest;
2. Compelled to accomplish something; or
3. Constrained not to do something,[15]

The moral duty of chiefs in a standard way does not preclude the chance of their activities being criminally handled, and this is as per Article 155 of the Company Law, which peruses:

“The arrangements concerning the obligation of the governing body and additionally the leading body of officials for their blunders and oversights controlled in this law do not diminish the arrangements specified in the law on criminal law.”

The arrangements of this article build up the rule that common obligation (civilrechtelijke aansprakelijkheid, risk under common Law), nor legitimate corporate responsibility (obligation under corporate Law) does not dispose of or decrease criminal (obligation under criminal Law) for mistakes and oversights carried out by chiefs. or potentially the leading group of magistrates on the off chance that incidentally, the mistake or oversight contains components of a criminal offense. [16]

Since a criminal demonstration is not just illegal in criminal Law, however, in specific conditions, it very well may be illegal in the feeling of common Law.[17] Therefore, beginning from the arrangements of article 155, the chiefs or potentially the leading group of officials can be all the while sued for common risk and

criminal obligation regarding the missteps or oversights they have perpetrated on the off chance that it just so happens, the mistake or exclusion disregards one of the criminal arrangements. For instance, an individual from the governing body or an individual from the leading body of officials “steals” the organization's resources. In such cases, simultaneously, the considerate and criminal risk is appended. Concerning criminal duty, it tends to be arraigned under Article 372 of the Criminal Code, deliberately taking or having against the privileges of a thing which completely or somewhat has a place with a restricted obligation company.[18]

4. CONCLUSION

Risk for legitimate activities for a PT that is not yet lawfully consolidated, if the activities are done by all individuals from the Board of Directors along with all authors and all individuals from the Board of Commissioners, even though when the lawful activity is completed, the Company is not yet a lawful substance, then, at that point, the obligation on a fundamental level turns into the duty mutually and severally liable for the lawful activity. As an insistence that an individual from the Board of Directors cannot make a legitimate move for a Company that has not acquired the situation with a lawful substance, without the endorsement, different individuals from the Board of Directors and individuals from the Board of Commissioners and their duties, they bear mutually and severally. Also, if by some stroke of good luck the organizers have made a legitimate move for the Company and at the time the lawful activity has completed, the Company has not acquired the situation with a lawful substance, then, at that point, the obligation turns into the moral duty of the individual concerned, and the lawful activity is not restricting on the company.

REFERENCES

- [1] Dzulkifli Umar & Utsman Handoyo, 2010, *Kamus Hukum Dictionary of Law New Edition*, Cetakan I, Quantum Media Press
- [2] Edilius dan Sudarsono, 1996, *Manajemen Koperasi dalam Teori dan Praktek*, Rineka Cipta, Jakarta.
- [3] Fuady, Munir, 1996, *Hukum Bisnis Dalam Teori dan Praktek*. Buku Ketiga, PT. Citra Aditya Bakti, Bandung
- [4] Fuady, Munir, 2005, *Perlindungan Pemegang Saham Minoritas*, CV. Utomo, Bandung. Hedrojogi, 2002, *Koperasi, Asas-Asas, Teori dan Praktek*, Raja Grafindo Persada, Jakarta
- [5] Kansil, CST., 2005, *Hukum Perusahaan Indonesia Bagian II*, Cet VII, Pradnya Paramita, Bandung.

- [6] Marzuki, Peter Mahmud., 2005, *Penelitian Hukum*, Kencana, Jakarta.
- [7] Ridho, Ali, 1986, *Hukum Dagang tentang Apek-Aspek Hukum Dalam Asuransi Usaha, Asuransi Jiwa dan Perkembangan Perseroan Terbatas*, Pradnya Paramita, Bandung. Soekardono, 1991, *Hukum Dagang Indonesia*, Rajawali Press, Jakarta
- [8] Tehker Sihombing, 2010, *Peran dan Aspek Hukum dalam Pembangunan Ekonomi*, Alumni, Bandung
- [9] Widjaya, Gunawan, 2008, *Risiko Hukum Pemilik dan Komisaris PT*, Forum Sahabat, Jakarta. Yahya Harahap, 2009, *Hukum Perseroan Terbatas*, Sinar Grafika, Jakarta
- [10] Yunara Edy, 2005, *Korupsi dan Pertanggungjawaban Pidana Korporasi Berikut Studi Kasus, PT. Citra Aditya Bakti*, Bandung.