1. Turnitin Jurnal Internasional

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Submission date: 14-Sep-2022 11:47AM (UTC+0800)
Submission ID: 1899384394
File name: Jurnal_1.pdf (504.89K)
Word count: 4856
Character count: 24909

JOINT RESPONSIBILITIES OF INTERNAL SHAREHOLDERS AGAINST CREDIT AGREEMENTS ON LIMITED COMPANY BANKRUPTCY: CONSIDERING PROVISIONS OF LAW OF LLC

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ABSTRACT

The existence of different definitions regarding the theory of legal entities certainly has certain implications in practice, especially those relating to accountability between legal entities and those behind legal entities. In this context, this paper attempts to describe the legal position of creditors if it turns out that the Limited Liability Company whose license is revoked is applying for credit at the bank. This is because in Indonesia, in Article 16 of Regulation of the Minister of Law and Human Rights No. 4 of 2014 concerning Procedures for Submitting Requests for Legal Entity and Approval of Amendments to Articles of Association as well as submission of notification of amendments to articles of association and amendments to Limited Liability Company data, it is stated that in the form of establishment of Limited Liability Companies with documents supporters as referred to in Article 13 are not in accordance with the provisions of laws and regulations, the Ministerial Decree regarding the establishment of limited companies is revoked. The results show that the legal act done by a Limited Liability Company before obtaining a Limited Liability Company Decree will remain valid, but it is the personal responsibility of the legal act to become a joint liability. Likewise, when the Decree of Establishment of the Limited Liability Company is revoked, the position of the Limited Liability Company is the same as the time before obtaining approval as a legal entity, which is jointly responsible. Secondly, the position of the creditor law of the Limited Liability Company whose Decree has been revoked is still entitled to all repayment from the existing debtor's achievement. When the decree has been revoked so that it is not a legal entity, the LLC is responsible for fulfilling these achievements jointly until the entire personal wealth of the founders of LLC.

Keywords: Joint Responsibility, Credit Agreement, Revocation of Legal Entities, Law of Limited Liability Company.

INTRODUCTION

Legal entity is an institution that does not materialize, in which its manifestation can be seen from the actions of managers who represent the legal entity. For example, the rights and obligations of a Limited Company as a legal entity can only be run by its administrators. Judging from its presence, a Limited Liability Company as a legal entity may also be referred to as a legal person who can act as a genuine person through his or her management. Judging by the doctrine of a legal entity, an institution or entity is referred to as a legal entity it has elements such as the existence of separate assets, having a specific purpose, having its own interests, the

existence of an organized organization (Ridho, 1986). An institution or entity that obtains the status of a legal entity, the mode of birth or its formation is not always the same, there is already defined by the law itself, that the institution referred to in the relevant law has the status as a legal entity, or there is through ratification by a particular agency or a mixture of both or by jurisprudence (Mulyawan, 2018; Lisdiyono & Suatmi, 2017).

Legal entities as legal subjects have several theories. In general, legal scholars consider that a legal entity as a tangible form, is considered to have the completeness of its own five senses as humans, so as a result, legal entities can be equated like humans (Budiono, 2012; Permadi, 2012). Furthermore, scholars also assume that the legal entity is not a concrete manifestation; behind the legal body it actually stands human. As a result, if the legal entity is making a mistake, then the error is the human error behind the legal entity.

The existence of differences regarding the theory of legal entities certainly has certain implications in practice, especially those relating to accountability between legal entities and those behind legal entities. In this context, this paper attempts to describe the legal position of creditors if it turns out that the Limited Liability Company whose license is revoked is applying for credit at the bank. This is because in Indonesia, in Article 16 of Regulation of the Minister of Law and Human Rights No. 4 of 2014 concerning Procedures for Submitting Requests for Legal Entity and Approval of Amendments to Articles of Association as well as submission of notification of amendments to articles of association and amendments to Limited Liability Company data, it is stated that In the Form of Establishment of Limited Liability Companies with documents supporters as referred to in Article 13 are not in accordance with the provisions of laws and regulations, the Ministerial Decree regarding the establishment of limited companies is revoked.

LIMITED LIABILITY COMPANY AS A LEGAL ENTITY

Legal entity is defined as a body that exists because the law is legally considered as a human being who can be held accountable if a legal act is committed by certain obligations and rights. So if the regulations governing the Limited Liability Company are not met then it cannot be said as a legal entity. A legal entity, such as Limited Liability Company must conduct its own legal actions on behalf of a limited liability company and also have an organ that represents a limited liability company in carrying out its duties. Limited Liability Company has wealth separate from personal assets. The company can be established based on agreement, meaning there must be at least two people who agree to establish the company. Two people here are excluded if the husband and wife are without prenuptial agreement, or parents and underage children. Where the property is considered to be one, it is considered one party only.

In Indonesia, a new limited company can be categorized as a legal entity if it has obtained a Legal Entity from the Minister of Law and Human Rights of the Republic of Indonesia. Having obtained the status of the legal entity, the founders of the Limited Company are no longer personally responsible for the engagement made on behalf of the Limited Liability Company and are not responsible for the loss of the Limited Liability Company in excess of the value of the shares taken. Article 1 Paragraph (1) of Company Law, states that Limited Liability Company is a legal entity which is a capital alliance, established under the agreement, conducting business activities with the authorized capital wholly divided into shares and fulfilling the requirements stipulated in Law of LLC and its implementing regulations. Limited Liability Company is a legal

entity that has rights and obligations and can be prosecuted before the court. Limited Liability Company which is a collection of capital contains the following characteristics. First, its legal entity can be seen from the characteristics such as the ratification of the Minister of Law and Human Rights (Article 7 paragraph (4) Law of LLC), if the Limited Liability Company has not been approved then its status has not been as a legal entity and all its responsibilities and obligations as well as the firm's fellowship. Limited Liability Company is a regulated organization, with the presence of GMS, Board of Directors and Board of Commissioners (Article 1 number 2, 4, 5 and 6 Law of LLC). Moreover, it owns property, meaning that it recognizes the separation of personal property with company property (Article 3 Law of LLC), and it can conduct legal relationship on behalf of the company (Article 98 paragraph (1) Law of LLC), and has its own goal, that is to make a profit. This all means that the limited liability company also conducts business activities to obtain profit. The company has its own assets apart from the personal wealth of its shareholders. The company's wealth is divided into trading shares; owner changes can be done without the need to dissolve the company.

In addition, the responsibility of shareholders is limited, the purpose is limited to the value of shares taken, except in the case of: (a) requirements for Limited Liability Companies as legal entities have not been fulfilled; (b) shareholders utilize limited liability companies for personal gain; (c) involved in breaking the law by a Limited Liability Company and taking the assets of a Limited Liability Company, (d) shareholders unlawfully use the assets of Limited Liability Companies so that the company cannot repay its debts. Other characteristics of limited companies based on the agreement is that it can be established by two individuals (individuals or legal entities) or more, with the existence of agreement of the parties establishing the Limited Liability Company, and the existence of obligation to take part at the time of establishment. Moreover, limited company is conducting business activities with the capital being divided into shares or capital accumulation and the period of operation can be unlimited (Saliman & Hermansyah, 2005).

LIMITED LIABILITY COMPANY BEFORE APPROVED AS LEGAL ENTITY

It is important for the business world, a business entity, especially a Limited Liability Company to obtain a Decree of establishment as a legal entity, because with the existence of the Decree it is expected to be able to take legal action with a third party. The Decree is one form of legal protection and legal certainty to the public. The Company obtained legal entity status on the date of issuance of ministerial decree regarding the Decree. In the era of globalization with intense competition allows a Limited Company to do legal actions before obtaining the Decree (not yet incorporated). There are legal actions carried out before the Limited Liability Company is legalized as a legal entity regulated in Articles 12, 13 and 14 of the Company Law. First, share ownership by prospective founders. In this matter, legal acts relating to the ownership of shares and deposits made by the founding candidate before the Limited Liability Company is ratified shall be included in the deed of incorporation of the Limited Liability Company (Article 12 paragraph (1) law of LLC). Legal actions related to share ownership and deposit of capital in the form of deed not authentic or authentic deed must be included in the deed of establishment of a Limited Liability Company. If the act of law is contained in a certificate that is not authentic, then the deed must be attached to the deed of establishment (Article 12 paragraph (2) Law of LLC) and if in the legal act mentioned in the authentic deed then included in the deed of

incorporation by mentioning number, the date, name and place of the notary who made the authentic deed (Article 12 paragraph (3) Law of LLC). So any legal act which occurs before a Limited Liability Company is incorporated into a deed of incorporation so that the legal act becomes clear who is doing the legal act, when the legal action is done and what legal act has been done (Wicaksono, 2018; Prayogo, 2018). This makes a preventive action in the event of undesirable things will become clear who is responsible for the legal act.

Second, Legal actions by the founding candidate for the benefit of Limited Liability Company. In this matter, Law of LLC makes it possible for prospective founders to conduct legal actions or commitments with third parties for the benefit of a Limited Company which will later bind the Limited Liability Company if it is incorporated. For example, the founder borrows a sum of money to rent a place for the office of the Limited Liability Company that is not yet incorporated, because for the benefit of the Limited Liability Company, the debt is not the personal debt of the founder but the debt of the Limited Liability Company.

LEGAL EFFECTS OF FOUNDER ACTS BEFORE BEING LEGALIZED AS A LEGAL ENTITY

Matters relating to share ownership are regulated in Article 12 paragraph (4) of the Company Law which states that in the event that the provisions referred to in paragraphs (1)-(3) are not fulfilled, and the legal act does not give rise to rights and obligations and is not binding on the company. This is a sanction if it does not perform the acts mentioned above, the result is all legal actions before the Limited Liability Company has not been authorized shall be the rights and obligations of each of the founding candidates and not the rights and obligations for the company, in other words the founding candidate cannot be demanding rights or obligations arising if the Limited Liability Company has become a Legal Entity.

Any legal action done by the founder for the benefit of a Limited Liability Company that has not yet been authorized may only be made by all members of the Board of Directors together with all the founders, members of the Board of Commissioners of the Company, and any legal deeds they undertake shall have the personal responsibility of doing such legal action as a result jointly and not binding on the company (Article 14 paragraph (1) of the Company Law). Unless the legal act is expressly stated explicitly in the first GMS which must be held 60 days after the status of the company obtains legal entity status (Article 14 paragraph (4) of the Company Law). In the first General Meeting of Shareholders, it is valid if the GMS is attended (attended by itself or represented by a power of attorney) by all shareholders representing all shares with voting rights and the decision is unanimously approved, the legal act done before the Limited Liability Company is authorized to answered the company after the company became a legal entity.

LIMITED LIABILITY COMPANY AFTER APPROVED AS LEGAL ENTITY

With the change in legal status, the founders change their position to shareholders by paying in full the shares that have become part of it in accordance with Article 33 paragraph (1) of the Company Law which states that the issued and fully paid-in capital as referred to in paragraph (1) is proven by valid deposit evidence. What is meant by "*legal deposit proof*" includes evidence of shareholder deposits into a bank account in the name of the Company, data from financial statements audited by an accountant, or company balance sheets signed by the

Board of Directors and Board of Commissioners. This is affirmed by Rudi Prasetya (2011), stating that according to Article 33 paragraph (1) of Law Number 2007, the issued capital must be fully paid at the time of establishment. In other words, of the issued capital at the time of its establishment can no longer be only partially deposited, but rather fully paid. The paid capital may not be in cash but may be in other forms. This is in line with the opinion of Nadapdap (2012) which states that deposit of share capital in non-cash form, the valuation is determined based on fair value determined at market price or by an expert not affiliated with a Limited Liability Company.

Deposit of shares in the form of immovable objects (land and buildings and their sequences) is regulated in Article 34 paragraph (2) of the Company Law, which must be announced in one or more national newspapers, within 14 (fourteen) working days after the deed of establishment is signed or after The GMS was first established. It was announced that the depositing of immovable shares in newspapers meant that the general public knew and provided an opportunity for interested parties to submit objections to the submission of these items as share capital in Limited Liability Companies (Wirawan, 2018). Strictly speaking in Article 3 paragraph (1) the Company Law states that the shareholders of the Company are not personally responsible for the agreements made or the name of the Company and are not responsible for the loss of the Company in excess of the shares held. From the provisions of Article 3 paragraph (1) of the Company Law above, this means that shareholders are responsible only for the shares deposited, and not including personal assets if the Limited Liability Company has become a legal entity.

LEGAL POSITION OF CREDITORS AFTER REVOCATION OF LLC

The Credit Agreement is an obligatory agreement that is always accompanied by a guarantee agreement (for example: mortgage rights, pledges, fiduciary and others), where the parties who sign the agreement are the bank as the creditor and the board of directors represent the Limited Liability Company as the debtor. As the organ of the company, the Board of Directors manages the company's activities for the benefit of the company and achieves the company's objectives and represents the company in all its actions, both inside and outside the court. In carrying out the management of the company, the Board of Directors is not only responsible for the company and its shareholders, but also for third parties who have legal relations and are related to the company, both directly and indirectly with the company.

Based on Article 1131 of the Civil Code, Satrio (1993) concluded the principles of external relations of creditors as follows:

1. A creditor may take out repayment from any part of the debtor's property.
2. Any part of the debtor's wealth may be sold for the settlement of the creditor's bill.
3. The right of the creditor's bill is only secured by the debtor's property only, not with the "*debtor person*."

"Schuld" and "*hafting"* principles refers to that everyone is responsible for its debt, so the debtor provides all his wealth either movable or immovable object to be guaranteed to pay off his debts to the creditor (Satrio, 1993). When the credit agreement is signed by the Board of Directors with the approval of the Board of Commissioners or with the approval of the shareholder's general shareholders' general meeting, where the status of the Limited Liability

Company is incorporated as legal entity, then an event where the Decree is revoked will result in legal consequences. As a result of the revoked the Decree, the original legal entity has become a legal entity. The question arises who is responsible for the debt of the debtor. If analysed further, then the legal act that has been done by Limited Liability Company with legal entity will return as before, that is the same as legal action before the company still has not obtained legal entity status in this case its responsibility becomes joint responsibility. This matter is regulated in Article 14 paragraph (1) and (2) Law of LLC which states that:

1. A legal action on behalf of a Company which has not obtained the status of a legal entity shall only be made by all members of the Board of Directors together with all founders and all members of the Board of Commissioners of the Company and they shall be jointly and severally liable for such legal actions.
2. In the case of a legal act as referred to in paragraph (1) shall be conducted by the founder on behalf of the Company which has not obtained a legal entity, the legal act shall be the responsibility of the founders concerned and shall not be binding on the Company.

Articles 1131 & 1132 of the Civil Code that in principle all corporate properties (assets) of a corporation as a debtor, whether in the form of movable or immovable objects, either existing or future, shall be borne by all the engagements it makes. The material is collateral for all creditors (concurrent unsecure creditor). The results of the sale of the material of the debtor According to the balance, namely According to the size of the respective receivables, except if among the creditors there is a reason to take precedence based on privileges (Sutedi, 2015). So it can be concluded that the creditor can seize and carry out the sale of property owned by the debtor.

Based on what has been described above, the debtor's original responsibility is a Limited Liability Company which has a legal entity and has become joint responsibility. The revocation of the Decree shall make the Limited Liability Company unlawful, automatically applicable to Article 14 paragraph (2) of Law of LLC, namely any legal act done by the founder for the interest of a Limited Liability Company which has not yet been authorized shall have the personal responsibility of doing such legal act as a result jointly. However, there is a situational condition that must be considered in relation to who is responsible, if the legal action occurs after the change of shareholders, the Board of Directors, or the Board of Commissioners.

Board of Directors under the provisions of Article 1 paragraph 5 Law of LLC, is the organ responsible for the management of the company for the interests and objectives of the company and represents the company both inside and outside the court. If the Board of Directors make a mistake or are negligent in performing its duties, causes loss (including those causing the Decree to be revoked) it can be held accountable jointly. It can be found in Article 97 Paragraph (3) of the Company Law which states that "*each member of the Board of Directors shall be solely responsible for the loss of the company if he/she is guilty or fails to perform its duties in accordance with the provisions referred to in Article (2).*" According to Article 97 Paragraph (6) of the Board of Directors for any misconduct or omission causing loss to the company may even be sued in the District Court by a shareholder of at least 1/10 (one tenth) share of all shares with valid votes.

In addition to Article 97 paragraph (3), Article 104 Paragraph (2) states that:

"In the event of bankruptcy as referred to in paragraph (1) occurs due to a mistake or negligence of the Board of Directors and the bankruptcy property is insufficient to pay all corporate liabilities in the bankruptcy, The Board of Directors is responsibly responsible for all unpaid liabilities of the bankrupt property."

The Board of Commissioners according to Article 114 has the duty to oversee the Board of Directors' policies in running the company and provide advice to the Board of Directors. In Article 117 paragraph (1) also authorizes the Board of Commissioners to give approval and assistance to the Board of Directors in performing certain legal actions. The definition of approval in certain legal actions is to give the Board of Commissioners approval in writing to the Board of Directors, whereas the definition of assistance is the action of the Board of Commissioners to assist the Board of Directors in performing certain legal actions, such as the signing of the deed where the company's assets are guaranteed and determined in the Articles of Association of the Board of Directors and Board of Commissioners present together to carry out these legal activities. Implicitly, the responsibility of the Board of Commissioners participates jointly if the company suffers losses due to negligence in supervising the policies of the Board of Directors in running the company.

After the Limited Liability Company has the status of a legal entity pursuant to Article 3 paragraph (1), the shareholder is not personally liable for the engagement made on behalf of the company and shall not be liable for the loss of the company beyond the value of the shares it has acquired in the company, unless the shareholder is included as the first time founder of the company. Where he acts as the founder first indirectly he participated in legal deeds before the Limited Liability Company incorporated and after the Limited Liability Company has obtained the decree so that incorporated. In accordance with Article 3 paragraph (2) letter (a) which reads: "*The provisions referred to in paragraph (1) shall not apply if: (a) Company requirements as legal entities have not been or have not been met*". So with the revocation of the Decree, the Limited Liability Company becomes a non-legal entity, it will automatically apply Article 14 paragraph (2) Law of LLC, namely that all legal actions taken by the founder for the sake of an unauthorized Limited Liability Company will have personal responsibility for the legal actions as a result become joint responsibility.

CONCLUSION

When the dissolution of LLC is done then LLC is obliged to do the ordering especially pertaining to third party, one of them with creditor. Limited Liability Company as a debtor performs legal acts in the form of loans with guarantees in the form of: mortgage, fiduciary, mortgage, mortgage or warehouse receipt to the creditor, the debt to the creditors will still exist. In addition, the creditor retains the right to the guarantee goods to execute in an effort to repay the debt. Hence, if a problem arises when the assets of the Guaranteed Company are insufficient from the amount of loan to be repaid then creditors whose rights are recognized by law are entitled to seek legal assistance, in the event that the debtor does not fulfil his or her performance obligations well and voluntarily. The lender may reimburse the claim of "*the debtor's achievement: the demand for the replacement of a fee, compensation and interest*" (short of compensation), so that if the claim is granted, the creditor will earn an equivalent amount of the debt to the debtor's performance. Thus, the creditors are still entitled to all repayment from the achievements of the debtor who ever existed. At the time of the decree of LLC as the debtor has

been revoked so that it becomes not legal entity then LLC is responsible for the fulfilment of such achievement jointly up to all personal wealth either existing or will exist.

Finally, two main conclusions can be summarized. First, the legal act done by a Limited Liability Company before obtaining a Limited Liability Company Decree will remain valid but it is the personal responsibility of the legal act to become a joint liability. Likewise, when the Decree of Establishment of the Limited Liability Company is revoked, the position of the Limited Liability Company is the same as the time before obtaining approval as a legal entity, which is jointly responsible. Secondly, the position of the creditor law of the Limited Liability Company whose Decree has been revoked is still entitled to all repayment from the existing debtor's achievement. When the decree from LLC has been revoked so that it is not a legal entity, the LLC is responsible for fulfilling these achievements jointly until the entire personal wealth of the founders of LLC, both existing and existing.

REFERENCE

Budiono, H. (2012). Direction of law number 40 of 2007 concerning limited company in facing the global era. *Journal of Rechts Vinding: National Legal Development Media, 1*(2), 187-198.

Lisdiyono, E., & Suatmiati, S. (2017). Socio-political and economic aspects in legal context. *European Research Studies*, *20*(4), 149-157.

Mulyawan, H. (2018). Functions of financial services authority in supervision of auto insurance companies. *Asian Journal of Law and Jurisprudence, 1*(1), 1-16.

Nadapdap, B. (2012). *Legal Limited Liability Companies*. Jakarta: Permata Aksara.

Permadi, I. (2012). Position of foreign legal entity in land ownership in Indonesia. *WACANA, Journal of Social and Humanities, 15*(4), 40-48.

Prasetya, R. (2011). *Limited Company Theory & Practice*. Sinar Grafika Jakarta.

Prayogo, G. (2018). Bitcoin, regulation and the importance of national legal reform. *Asian Journal of Law and Jurisprudence, 1*(1), 1-20.

Ridho, R.A. (1986). *Commercial Law: About Legal Aspects in Air Insurance, Life Insurance and Development of Limited Liability Companies*. Jakarta: CV Remadja Karya.

Saliman, A.R., & Hermansyah, A.J. (2005). *Business Law for Companies*. Jakarta: Kencana Prenadamedia Group.

Satrio, J. (1993). *Legal Guarantee of Fiduciary Material Security Rights*. Bandung: PT. Citra Aditya Bakti.

Sutedi, A. (2015). *Smart Book of Limited Liability Law*. Jakarta: Raih Asa Sukses.

Wicaksono, A.H. (2018). Reposition of local wisdom based on Pancasila on the function of the prosecution of attorney as a legal enforcement component in Indonesia. *Asian Journal of Law and Jurisprudence, 1*(1), 30-45.

Wirawan, A. (2018). Future direction of the politics of law of the public service. *Asian Journal of Law and Jurisprudence, 1*(1), 45-57.

This article was originally published in a special issue, entitled: **"Legal aspects of Regionalism, Domesticity Agrarian, and Shariah principles",** Edited by Muhammad Haseeb.

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