As-Sakha
Sharia Economics Law and Legal Studies
Volume 1| Nomor 1| Juli 2024
p-ISSN: xxxx-xxxx | e-ISSN: xxxx-xxxx

RESPONSIBILITIES OF LEGAL ENTITIES ACCORDING TO PROPRIETE COLLECTIVE THEORY (Case Study of Surabaya District Court Decision Number 2160/Pid.B/LH/2023)

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Received: 05-04-2024; Accepted: 07-07-2024; Published: 08-07-2024;

Abstrak

Dunia bisnis sedang mengalami perkembangan yang sangat pesat. Dalam berbisnis, banyak pengusaha yang memilih bentuk perseroan terbatas. Perseroan terbatas adalah badan hukum yang umumnya digunakan untuk menjalankan bisnis di banyak negara di dunia. Penelitian ini mengkaji pertanggungjawaban badan hukum khususnya Perseroan Terbatas (PT) berdasarkan Propriete Collective Theory dengan fokus pada Putusan Pengadilan Negeri Surabaya Nomor 2160/Pid.B/LH/2023. Perspektif teoritis ini menekankan bahwa badan hukum adalah sekelompok manusia yang mempunyai kepentingan yang sama. Metode penelitian menggunakan kerangka konseptual Common Wealth Theory dan analisis dokumen putusan pengadilan. Hasil analisis menunjukkan PT Aditamah Mandiri dijatuhi hukuman denda dan penutupan perusahaan. Dibahas implikasinya terhadap kekayaan bersama para anggota perusahaan, termasuk langkah-langkah strategis yang harus diambil
Kata Kunci: Tanggung jawab; Badan hukum; Teori Kolektif Kepemilikan.

Abstract

The business world is undergoing a very rapid development. In doing business, many entrepreneurs choose the form of a limited company. A limited corporation is a legal entity that is generally used to conduct business in many countries around the world. The study examines the liability of legal entities, in particular the Limited Company (PT), based on the Propriete Collective Theory with a focus on the Surabaya State Court Decision No. 2160/Pid.B/LH/2023. This theoretical perspective emphasizes that the legal body is a group of human beings with common interests. The research method uses the conceptual framework of Common Wealth Theory and analysis of court ruling documents. Analysis

results showed that PT Aditamah Mandiri was sentenced to a fine and closure of the company. The implications for the joint wealth of the company members are discussed, including the strategic steps that should be taken.
Keywords: Responsibility; Legal Entity; Propriete Collective Theory.

Introduction

Limited liability companies as legal subjects are essentially the personification of "legal subjects" in the form of people. However, basically the controllers of a limited liability company are the individuals (people) behind it. The word "limited" in a Limited Liability Company provides an illustration of one of the characteristics of a Limited Liability Company which limits the authority and responsibility of shareholders to the size of the shares issued, unless the shareholder commits negligence as stipulated in Article 3 of the Company Law.[1] In this case, so that a limited liability company can act like a human being, an organ is needed as a tool for the limited liability company to establish legal relations with third parties and realize its real existence in order to run the business. The organs of the limited liability company in question consist of: 1. General meeting of shareholders (GMS), 2. Directors, and 3. Board of commissioners.[2]

Based on article 1 of the Limited Liability Company Law no. 40 of 2007 concerning Limited Liability Companies, the definition of a Limited Liability Company (company) is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and meets the requirements stipulated in this law and its implementing regulations.[3] If you look at several company organs, it can be understood that in a limited liability company, the shareholders through their commissioners delegate their authority to the Board of Directors to run and develop the company with the company's objectives and business fields. In carrying out these duties, the Board of Directors has the authority to legally represent the company, negotiate agreements and contracts, and take other actions. The Board of Directors functions as the company's representative, both inside and outside the

[1] Pamonaran Manahaar, Isis Ikhwansyah, and R. Kartikasari, "Kedudukan Peraturan Dewan Komisaris Dalam Pengelolaan Perusahaan Dihubungkan Dengan Tanggung Jawab Direksi Dan Dewan Komisaris Berdasarkan Prinsip-Prinsip Pengelolaan Perusahaan," *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (2021): 14, https://doi.org/10.23920/jphp.v3i1.552.

[2] Uul Fathur Rahmah, "Kewenangan Direksi Dalam Pengurusan Perseroan Terbatas," *Lex Economica Journal* 1, no. 1 (2023): 56.

[3] Dewi Oktavia and Irene Svinarky, "Pendirian Perusahaan Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas" 1 (2022): 52–57.

court.[4] The main focus of the Board of Directors' duties is to manage company activities, because they act as legal representatives of the Limited Liability Company entity which exists as an independent legal subject. The duties, responsibilities and authority of the Board of Directors are regulated by statutory provisions, which confirm that the existence of the Board of Directors in a company is also subject to applicable legal provisions.[5]

In managing a company, several theories are found which generally become the basis for its implementation. One of the theories referred to and which forms the basis of this article was put forward by Rudolf von Jhering (1818-1892), namely the theory of common wealth, which considers legal entities as a collection of people. This connotation means that the interests of a legal entity are the interests of all its members.[6] According to this theory, the rights and obligations of a legal entity are essentially the rights and obligations of its members together.[7] The assets of a legal entity are jointly owned (eigendom) of all its members. The people who gather form a unit and form a person called a legal entity. Therefore, a legal entity is only a juridical construction. In essence, a legal entity is something abstract. This common wealth theory argues that what can be the subjects of legal entity rights are: a) the humans who are actually behind it; b) members of legal entities; and c) those who benefit from a foundation.[8]

As previously explained regarding limited liability companies as legal entities (legal subjects), one of the corporations with the name CV. ADITAMAH MANDIRI who was caught in a special criminal case involving an environmental case in the Surabaya area. On November 19 2022 at 12.00 WIB, officers from the Director of Environmental and Forestry Prevention and Security moved to the Berlian Jasa Terminal Indonesia (BJTI) Terminal to seek information regarding the docking schedule of the MV. Verizon ship which was suspected of carrying containers containing illegal sawn wood from

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[4] Shinta Pangesti, "Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (2021): 117.

[5] Rahmah, "Kewenangan Direksi Dalam Pengurusan Perseroan Terbatas."

[6] Dyah Hapsari Prananingrum, "Telaah Terhadap Esensi Subjek Hukum: Manusia Dan Badan Hukum," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (2014): 73–92, https://doi.org/10.24246/jrh.2014.v8.i1.p73-92.

[7] Universitas Negeri Islam Suska Riau, "Pengertian, Syarat Berdirinya Badan Hukum, Teori Badan Hukum, Pembagian Badan Hukum Dan Hakekat Badan Hukum," 2017, 18–34.

[8] Krisnawan Krisnawan, "TINJAUAN YURIDIS EKSISTENSI BADAN HUKUM PERKUMPULAN LEMBAGA PENDIDIKAN PERKEBUNAN PASCA TRANSFORMASI TAHUN 2019" (Politeknik LPP Yogyakarta, 2022).

Papua. At around 16.30 WIB, officers witnessed the arrival of the MV. Verizon ship at the BJTI Terminal and monitored the process of unloading the ship's containers. On November 20 2022, after the containers had been unloaded, officers carried out an inspection and found 30 containers containing chain saw sawn timber from Nabire, Central Papua, which were still in the semi-finished goods category.

Officers then coordinated with PT. Salam Pacific Indonesia Lines (PT. SPIL) to secure the 30 containers. After collaborating with PT. SPIL and the BJTI terminal, officers opened the container to check the contents, volume and owner of the chain saw sawn timber. Of the 30 containers, 23 of them belonged to the defendant CV. Aditamah Mandiri, but was not equipped with a Certificate of Validity of Forest Products for Processed Wood (SKSHHKO). On Saturday, December 3 2022, officers again carried out security operations against the circulation of illegal wood by inspecting the Hijau Jelita ship which was suspected of transporting illegal wood forest products from Papua to East Java. The officers requested transportation documents from PT.SPIL and coordinated with Pelindo to inspect the Hijau Jelita ship which was docked. After inspection, 27 containers containing chain saw sawn timber from Papua were found, which were then secured by officers at the BJTI Terminal.

On Monday, December 5 2022, officers together with PT.SPIL and the BJTI terminal opened the container to check the contents, volume and owner of the chain saw sawn timber. Of the 27 containers, 11 of them belonged to defendant I CV. Aditamah Mandiri, which is also not equipped with SKSHHKO documents. So, the total container containing chain saw sawn timber belonging to the defendant CV. Aditamah Mandiri which was transported using an MV ship. Verizon and Hijau Jelita are 34 containers. The actions of the defendants are in line with the criminal provisions in Article 94 in conjunction with Article 83 of Law of the Republic of Indonesia Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, which has been amended and supplemented by Law of the Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Laws -Law Number 2 of 2022 concerning Job Creation Becomes Law.

Based on the background of alleged violations of environmental cases above, the author is interested in reviewing how the responsibilities of legal entities are interpreted based on Proprietary Collective Theory, then what are the principles of collective wealth theory which are the basis for determining the responsibilities of legal entities, and how the responsibilities of legal entities are implemented in The context of Propriete Collective Theory is explained in the Surabaya District Court Decision Number 2160/Pid.B/LH/2023. With the aim of seeing whether this theory is used in matters relating to violations committed by corporations, and seeing how the parties are responsible for the violations.

Method

This research uses a type of normative juridical research. conceptual framework used in analyzing the responsibilities of legal entities. the relationship between the main concepts in the Common Wealth Theory and the elements to be studied. Explain the research approach and methods used, such as qualitative case studies, document analysis, interviews, or a combination of methods. Explains the selection of informants or data sources.

Findings and Discussion

Existence of Legal Entities in Indonesia

The term legal entity is commonly known and used in society, including in various legal traffic. Legal entities are legal subjects other than humans as legal subjects.[9] A legal entity (legal person, legal entity, rechtspersoon, persona moralis) is an entity that has rights and obligations so that it is able to carry out legal actions (rechts-betrekking/rechtsverhouding) like humans (natuurlijkpersoon), has its own assets, and can be sued and sued, before the court.[10] Historically, legal entities first appeared in the form of cooperatives. The first cooperative was founded in Rochdale, England in 1844. Its founders were oppressed workers.[11] Namely workers in a textile factory with initially numbering 28 people. They were encouraged to combine their limited abilities by forming an association and setting up a shop. This cooperative is a consumer cooperative that tries to overcome the consumption needs of its members in a collaborative way.[12] The

[9] A A Gede D H Santosa, "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat," *Jurnal Komunikasi Hukum (JKH)* 5, no. 2 (2019): 152–66.

[10] Muhhamad Habibi Miftakhul Marwa, "Analisis Status Badan Hukum Dana Pensiun," *Jurnal Yustika: Media Hukum Dan Keadilan* 23, no. 01 (2020): 1–12.

[11] Cornelis Simanjuntak, "Organ Perseroan Terbatas," 2009.

[12] Nicky Rambing, "Syarat-Syarat Sahnya Pendirian Perseroan Terbatas (PT) Di Indonesia," *Lex Privatum* 1, no. 2 (2013).

Rochdale Cooperative demonstrated success with the founding of 100 consumer cooperatives in England in 1852. Then in 1862 the consumer cooperatives in England united themselves to become the Cooperative Wholesale Society (CWS). The success of cooperatives in England was quickly followed by other countries until finally in 1896 in London the ICA (International Cooperative Alliance) was formed, so cooperatives had become an international movement.[13]

Article 1653 of the Civil Code states that legal entities can be established by general authority; legal entity recognized by general authority; and legal entities that are permitted and established for a specific purpose, which does not conflict with the law or morality.[14] Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Changes and Dissolution of Limited Liability Company Legal Entities.[15] Then, in Article 1 point 1 of the Company Law, it provides an illustration that a PT consists of shares or holdings, which reads "Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and fulfills the requirements stipulated in this Law and its implementing regulations."[16]

Legal entities can be divided into two types, namely private legal entities and public legal entities. A private legal entity (Private Rechts Person) is a legal entity established based on civil or civil law which concerns the personal interests of the people within that legal entity.[17] This kind of legal entity is a private entity established by people, either alone or in large numbers, for certain purposes, namely seeking profit, social, educational, scientific and other things, and according to applicable law is valid. For example: Limited Liability Company (PT), Cooperative, Foundation, Charity Agency, and others.[18]

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[13] Muhammad Rifqi Hidayat, "Analisis Fikih Klasik Terhadap Badan Hukum Sebagai Aqid," *Al-Iqtishadiyah: Ekonomi Syariah Dan Hukum Ekonomi Syariah* 2, no. 2 (2015).

[14] Suparji, *TRANSFORMASI BADAN HUKUM DI INDONESIA*, Edisi Pert (Jakarta: UAI Press, 2015).

[15] Kemenkumham, "Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 21 Tahun 2021 Tentang Syarat Dan Tata Cara Pendaftaran Pendirian, Perubahan, Pembubaran Badan Hukum Perseroan Terbatas," no. 470 (2021): 19.

[16] Mustapa Khamal Rokan and Aida Nur Hasanah, *HUKUM PERUSAHAAN Konsep Hukum Positif Dan Islam Serta Berbasis Kasus, Perdana Publishing* (Medan: Perdana Publishing, 2020), 128–29.

[17] Alusianto Hamonangan et al., "Peranan Kurator Terhadap Kepailitan Perseroan Terbatas," *PKM Maju UDA* 2, no. 1 (2021): 20–34.

[18] S H Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas* (Raih Asa Sukses, 2015).

Meanwhile, a public legal entity (Public Rechts Person) is a legal entity established based on public law or which concerns the interests of the public, or the people and/or the state.[19] These legal entities are state bodies formed by people in power based on legislation which is carried out functionally by the executive or government, or management bodies which are given duties and authority to the relevant bodies, such as the Republic of Indonesia, provincial regional governments and district/city regional governments, and state companies.[20]

According to Soedikno Mertokusumo, public law is usually formulated as a law that regulates the relationship between rulers and their citizens. This public law is the whole set of regulations which are the basis for the state to regulate how the state carries out its duties, so it is a protection of the state's interests because it pays attention to the public interest, so the implementation of regulations Public law is carried out by the authorities.[21] While private law is law between individuals which regulates the rights and obligations of one individual towards another in social interactions, law in family relations gives rise to two areas of law, namely personal and family law.[22] Apart from law in social relations that gives rise to object law and contract law, there is another area of civil law, namely inheritance law which contains elements of family and object law. So the field of private law includes law regarding persons, family law, object law, contract law and inheritance law, the implementation of which is left to each individual. There are several benchmarks used to differentiate between public law and private law. In public law, one party is the authority. In private law, the parties are individuals, without ruling out the possibility that in private law, the authority can become a party. Public law regulations are coercive, while private law regulations is complementary although there are also those that force it.[23]

Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Changes and

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[19] Desak Putu Dewi Kasih, "Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal," *Arena Hukum* 15, no. 1 (2022): 20–37.

[20] Rokan and Hasanah, *HUKUM PERUSAHAAN Konsep Hukum Positif Dan Islam Serta Berbasis Kasus*.

[21] Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika (Bumi Aksara), 2021).

[22] Niru Anita Sinaga, "Hal-Hal Pokok Pendirian Perseroan Terbatas Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 2 (2018).

[23] Santosa, "Perbedaan Badan Hukum Publik Dan Badan Hukum Privat."

p-ISSN: xxxx-xxxx | e-ISSN: xxxx-xxxx

Dissolution of Limited Liability Company Legal Entities.[24] Then, in Article 1 point 1 of the Company Law, it provides an illustration that a PT consists of shares or holdings, which reads "Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and fulfills the requirements stipulated in this Law and its implementing regulations."[25]

Viewing the Accountability System Through Proprietary Collective Theory

PT as a legal entity is supported by several Legal Entity Theories, namely Fiction Theory, Organ or Realist Theory, and Joint Ownership Theory. Fiction Theory states that legal entities are included as legal subjects because the statutory regulations regulate them. Organ or Realist Theory states that legal entities are included as legal subjects because this theory equates legal entities with people. A legal entity can express its will like a person, namely through its organs. The Joint Ownership Theory states that legal entities are legal subjects because they are a juridical construction, where people gather whose rights and obligations become collective rights and obligations in a legal entity. It is not only the rights and obligations that are integrated into a legal entity, but also the assets of the group of people. These three theories both state that legal entities are legal subjects, although the basis of the three theories is different. If we quote M. Yahya Harahap's opinion regarding company personality (rechtspersoonlijkheid, legal personality), which essentially states that if "something" has rights (recht, right) and obligations (duties) like humans, then according to the law "something" has Rights and obligations are legal subjects in the category of legal entity. PT as a legal entity means the responsibility of its owners or shareholders is limited. Limited liability is the main characteristic of a PT, although in certain cases it is not absolute. The limited liability provisions are an affirmation of the personality characteristics of the PT as a legal subject. Shareholders are only responsible for the amount of their deposit or all the shares they own and do not include their personal assets. The existence of the separate entity principle means that the existence of a PT will not depend on its shareholders, which is different from civil

[24] Kemenkumham, "Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Nomor 21 Tahun 2021 Tentang Syarat Dan Tata Cara Pendaftaran Pendirian, Perubahan, Pembubaran Badan Hukum Perseroan Terbatas."

[25] Rokan and Hasanah, *HUKUM PERUSAHAAN Konsep Hukum Positif Dan Islam Serta Berbasis Kasus*.

partnerships, firms or limited partnerships where the entity that owns the capital is equated with the partnership entity so that the existence of the partnership depends on the owners of the capital. The occurrence of a change in shareholder ownership, whether due to legal events or due to legal actions, will not change the existence of the PT as persona standi in judicio. PT as an entity that is different from its shareholders, the relationship between its shareholders should be separate, both in terms of assets and management. Assets included in the PT through shares by the founders and/or shareholders become separated from their ownership and turn into the assets of the PT. The separation of assets between the founders and/or shareholders of the PT and the PT is emphasized by the principle of continuity of existence. The existence of a separation regarding the assets of the founders and/or shareholders of the PT and the PT also affects the management of the PT. Management at PT has the characteristic of perpetual succession, so that changes in shareholders do not affect the existence of the PT.

Analysis of Decision Number 2160/Pid.B/LH/2023/PN SBY

After going through a long trial process, in this case the Panel of Judges decided that Defendant I, namely CV. ADITAMAH MANDIRI, represented by the Management/Proxy, and Defendant II, Amir bin (late) Daeng Tata, have been proven guilty of the criminal act of "transporting, controlling or possessing timber forest products which are not accompanied by a certificate of legality of the forest products together. ". The Panel of Judges handed down the sentence with careful consideration, namely imposing a fine of IDR 10,000,000,000 (ten billion rupiah) on Defendant I, and imposing a prison sentence of 7 (seven) years on Defendant II, Amir bin (late) Daeng Tata. , which will be deducted during the detention period. Apart from that, Defendant I was also subject to additional punishment in the form of closing the CV company. ADITAMAH INDEPENDENT. In the event that the fine is not paid, Defendant II is threatened with imprisonment for 3 (three) months. The Panel of Judges also determined that the period of arrest and detention of Defendant II would be deducted from the sentence imposed. Defendant II is required to remain detained in prison while serving the sentence that has been decided. This decision was taken to maintain justice and enforce applicable laws. All parties are requested to comply with this decision in good faith in accordance with applicable legal provisions. This is supported by many other pieces of evidence.

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Conclusion

In the context of the responsibility of legal entities according to the Proprietary Collective Theory, it is explained that legal entities, such as Limited Liability Companies (PT), are groups of people who form a unit and have collective rights and obligations. The assets of a legal entity are considered to be the common property of all its members, and the legal entity is considered to be a juridical construction. This research explores the implementation of the Common Wealth Theory in environmental criminal cases involving CV. Aditamah Mandiri, based on Surabaya District Court Decision Number 2160/Pid.B/LH/2023. Analysis of this case shows that the legal entity (PT Aditamah Mandiri) was proven guilty of criminal acts related to timber forest products that were not accompanied by a legal certificate. In the context of legal entity responsibility, court decisions provide for fines and imprisonment for related parties, as well as company closure. By involving the Proprietary Collective Theory, the responsibility of a legal entity is understood as a joint responsibility of the company's members. Fines and company closures can affect members' collective wealth, so strategic steps need to be taken to overcome these consequences. This includes evaluating regulatory compliance, implementing operational changes, considering legal remedies, and establishing stricter internal policies. Thus, the resolution of problems and responsibilities of legal entities in this case must be carried out taking into account the common interests of company members. These steps reflect the principles of the Common Wealth Theory, where the continued existence of legal entities and the restoration of common wealth are the main focus.

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