

ANALYSIS OF THE APPLICATION OF THE PIERCING THE CORPORATE VEIL DOCTRINE TO THE LIABILITY OF INDIVIDUAL CORPORATIONS

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Abstract: *Micro and Small Enterprises in Indonesia necessitate assistance in establishing a favorable business environment. The Government has initiated the implementation of an Individual Company policy, a regulatory advancement for commercial entities, designed to enhance national economic development significantly. The introduction of individual enterprises under the Job Creation Law is anticipated to expedite Indonesia's economic growth. The employed research approach is normative juridical, supplemented by interviews. The findings suggest that the existence of individual firms is intricately linked to Law No. 11 of 2020 and Law No. 6 of 2023, which establish limited liability via the one-tier board system inside their corporate structures. In Bali Province, the implementation for MSME players has not seen substantial development; MSME entrepreneurs continue to utilize Cooperatives as their legal structure to support their enterprises.*

Keywords: Companies, Individual Companies, MSMEs

I. INTRODUCTION

Human daily life is intricately connected to economic activities. This financial activity engages individuals and organizations in facilitating economic operations, hence assuring efficient and sustainable transactions. The participants in this financial transaction are diverse, comprising individuals and other legal and non-legal entities. A Limited Liability Company (LLC) is a crucial legal entity in the economy. A limited liability company is a legal entity that possesses distinct characteristics in comparison to other business companies. A defining trait that differentiates a Company from other business structures is the doctrine of separate legal personality, which delineates the separation of assets between the owner or financier (shareholders) and the assets of the legal entity itself. In Indonesia, commercial entities are

classified into many types, including partnerships, CVs, and Limited Liability Companies. (PT).⁴

Moreover, the innovation of the present limited liability corporation is the enactment of Law Number 11 of 2020 regarding Job Creation, which facilitates the advancement of MSMEs by allowing them the flexibility to function as separate enterprises. The Job Creation Law represents a governmental initiative aimed at facilitating corporate operations and enhancing the investment environment.⁵ Nonetheless, the Job Creation Law has undergone an extensive process involving judicial review by the Constitutional Court, conditional unconstitutionality, a government regulation in lieu of a law, and ultimately, the Law was established through Law Number 6 of 2023 regarding the Stipulation of Government Regulations in place of Law Number 2 of 2022 concerning Job Creation.

The existence of this new Job Creation Law broadly has similarities with the Job Creation Perppu, which amends and repeals approximately 82 laws.⁶ The New Job Creation Law amends the definition of PT as outlined in Chapter VI, Part Five, Article 109, Number (1). It states: "A Limited Liability Company, henceforth referred to as a Company, is a legal entity formed as a capital partnership based on an agreement, engaging in business activities with authorized capital wholly divided into shares or individual legal entities that satisfy the criteria for micro and small businesses as defined in relevant laws and regulations."

This definition may be seen as an innovation within the company. The corporation was formerly a legal entity of a capital partnership, a contractual arrangement that established the PT as a "artificial person."⁷ An Artificial Person, or legal body, as delineated in Law Number 40 of 2007 regarding Limited Liability Companies, must be constituted by at least two individuals. The new Job Creation Law introduces a word in the article about the establishment of a Company that can be formed by a single individual, henceforth referred to as a Company that meets the criteria for MSMEs.

The Company previously had the main organs, namely the GMS, Commissioners, and Board of Directors.⁸ Typically, multiple individuals are accountable for the organization, overseeing policy formulation, monitoring, and execution. Nonetheless, this may vary in the formation of a distinct Company.

In a PT, the shareholders' restricted liability is not absolute; there are instances when, under specific conditions, they may be held personally accountable.⁹ The limited liability of shareholders is nullified or inapplicable under particular circumstances, including non-compliance with PT requirements, shareholders acting in bad faith to exploit the PT for personal gain, involvement in PMH conducted by the Company, or misappropriation of the PT's assets to the detriment of the Company's obligations. .¹⁰ Limited liability is not unconditional, as it does not eliminate the possibility of the PT's organ perpetrating a harmful

⁴ Dentria Cahya Sudarsa and I Wayan Parsa, Legal Certainty of Registration of Committent Partnerships in the Business Entity Administration System, (Journal of Notary Law Acta Comitas, Vol. 5 No.3 2020. p. 211)

⁵ Putu Devi Yustisia Utami et.al, "Individual Companies in Micro and Small Enterprises: The Position and Responsibilities of Company Organs", Udayana Master Law Journal 10, no. 4, (2021): 769-781. H770-771.

⁶ *Ibid*

⁷ Jamin Ginting, *Law of Limited Liability Companies (Law No. 40 of 2007)*, (Bandung: Citra Aditya Bakti, 2007), p. Sec. 13.

⁸ Indonesia, Law on Limited Liability Companies, Law Number 40 of 2007, Law Number 106 of 2007 Law Number 4756, Ps. 1 numbers 4, 5, 6

⁹ Kurniawan, Shareholder Responsibility p.78

¹⁰ Indonesia, Law on Limited Liability Companies, Law Number 40 of 2007, Ps. 3 paragraph (2)

error or acting in bad faith to exploit the PT for personal benefit. ¹¹ In such cases, it is necessary to take personal accountability. ¹² The phenomenon of complete non-applicability warrants further examination when shareholders engage in the management of the Company and incur losses for the Company or other stakeholders. The liability of shareholders is no longer limited; thus, if it is established that the shareholders have engaged in the actions specified in Article 3, paragraph (2), they are accountable for the damages incurred by the Company or third parties. This process is referred to as piercing the corporate veil, which entails removing the veil that obscures the company's true identity, thereby transcending its limited liabilities to impose unlimited liability.¹³

This aspect is perceived as absent in the Company's application, because the Company is generally a distinct legal entity from its directors and stockholders. A single individual conducts management within the Company. This motivates the author to undertake a comprehensive examination of corporate accountability, analyzed through the lens of legal statutes, by posing the question: how is the responsibility of individual corporations assessed concerning the theory of piercing the corporate veil?

II. RESEARCH METHODS

This research utilizes normative legal methodologies, incorporating both primary and secondary legal sources..¹⁴ The principal legal materials utilized are statutes, whilst secondary legal materials encompass books and articles. Legal materials are gathered by library research and examined descriptively. This legal research employs both a statutory and a philosophical approach..¹⁵ Specifically, analyzing regulations pertinent to research, including the Limited Liability Company Law Number 40 of 2007, Law Number 11 of 2020 regarding Job Creation, and Law Number 6 of 2023 concerning the Establishment of Government Regulations in place of Law Number 2 of 2022 regarding Job Creation, as well as Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises. The conceptual framework is predicated on the principle established in Company law, particularly the theory of piercing the corporate veil. The data were subjected to descriptive analysis, leading to conclusions derived from the study.

III. RESEARCH RESULTS

Headlines from the Analysis or Results

The legislation requires modernization and serves as an instrument of social engineering. The Job Creation Law, along with the involvement of private enterprises, undoubtedly facilitates business operations, empowers, and safeguards MSMEs. An analysis of business development data from the Ministry of Cooperatives and SMEs for 2017-2018 reveals substantial transformations within MSMEs, which are regarded as the cornerstone of the national economy. They comprise 64.2 million entities, accounting for 99.99% of all

¹¹ Chatamarrasjid, *Piercing The Corporate Veil*, (Bandung: Citra Aditya Bakti, 2000), p. Sec. 3.

¹² Monica Caecilia Darmawan, Legal Protection for Minority Shareholders Harmed by Directors Mistakes or Negligence, (*Journal of Jurist Diction*. Vol.2 No.3 2019),p. 987

¹³ Zarman Hadi, Characteristics of Personal Responsibility of Shareholders, Commissioners and Directors in Limited Liability Companies (Universitas Brawijaya Press, 2011)

¹⁴ Fajar ND., M., & Achmad, Y., Dualism of Legal Research: Normative & Empirical. 2010. Student Library. p.157-158

¹⁵ *Ibid*

business operators, contribute 61.07% to the Gross Domestic Product (GDP), and absorb 97% of the Indonesian workforce..¹⁶

An Individual Company is defined as a company carried out by one entrepreneur.¹⁷ An individual establishes, finances, and manages the company. A firm formed by a single individual, conforming to the regulations for Micro and Small Enterprises (MSEs), is referred to as an Individual PT or Individual firm, as it is only owned by one shareholder. The Individual Company model has been recognized in several countries, including Indonesia. In the United Kingdom (UK) and the European Union (EU), it is referred to as a single-member private limited liability company. In Malaysia, it is termed Sendirian Berhad (Sdn Bhd), and in Singapore, it is designated as a private limited company. The designation Single-Member Private Limited Liability Company, or Single-Member Company, is utilized in legal frameworks to parallel PT Perseorangan, which is slated for regulatory consideration. This Individual PT for MSEs does not necessitate a deed of incorporation, but simply the requisite conditions for the foundation of the Company, which are electronically sanctioned by the Minister of Books and Human Rights (endorsement fee is waived)¹⁸

The Company operates with the assistance of its organs, which are essential assets that distinguish the Company's assets from those of its shareholders. These entities are necessary for the Company to execute its legal actions.¹⁹ The Company, as an autonomous legal entity, possesses the status of a distinct legal subject to whom rights and obligations analogous to those of a natural person under human law can be ascribed..²⁰

The Company, as a legal entity, signifies its capacity to function as a legal subject and engage in legal interactions. Legal entities are distinct from the subjects of human law; they represent a social phenomena that constitutes a tangible or original factor, existing as a reality inside the legal framework, despite not taking the form of individuals..²¹

The discussion regarding a specific company transitions from the definition of a Limited Liability Company as articulated in the amendment of Article 1, number 1, of the Law on Limited Liability Companies, as stated in Article 109 of the Law on Job Creation, to "Limited Liability Company, hereinafter referred to as a Company, is a legal entity that constitutes a capital partnership, established based on an agreement, engages in business activities with authorized capital that is wholly divided into shares, or an individual Legal Entity that fulfills the criteria for Micro and Small Enterprises as delineated in the laws and regulations about Micro and Small Enterprises." The new definition suggests the existence of two categories of companies: the first, a sole proprietorship, and the second, a partnership or corporation formed by two or more individuals.

¹⁶ Ministry of Cooperatives and Small and Medium Enterprises (SMEs), "Development of Micro, Small, Medium Enterprises (MSMEs) and Large Enterprises (UB) Data in 2017-2018", [http://www.depkop.go.id/uploads/laporan/1580223129_DEVELOPMENT%20DATA%20USAHA%20MICRO,%20SMALL,%20MEDIUM%20\(MSMEs\)%20AND%20ENTERPRISE%20BIG%20\(UB\)%20TAHUN%202017%20-%202018.pdf](http://www.depkop.go.id/uploads/laporan/1580223129_DEVELOPMENT%20DATA%20USAHA%20MICRO,%20SMALL,%20MEDIUM%20(MSMEs)%20AND%20ENTERPRISE%20BIG%20(UB)%20TAHUN%202017%20-%202018.pdf), (accessed on January 30, 2020)

¹⁷ Zainal Asikin ^ Wira Pria Suhartana, Introduction to Corporate Law, First Edition, (Jakarta: Prenada Media Group, 2016), p.6

¹⁸ Satya Bhakti Parikesit, "Explanation of the Job Creation Bill", (Paper Presented at the Seminar on Responding to the Omnibus Law, Pros and Cons of the Job Creation Bill, Faculty of Law, University of Indonesia, Depok, February 6, 2020).

¹⁹ Mulhadi. Corporate Law: Forms of Business Entities in Indonesia. 2020. PT Raja Grafindo Persada. p.99.

²⁰ Chatamarrasjid Ais, Revealing the Corporate Veil of Corporate Law Select. 2000. PT Citra Aditya Bakti. p.25

²¹ Neni Sri Imayati, 2009.

The stipulations for Micro and Small Enterprises are outlined in the legislation and regulations governing these entities. The examination of the permitted capital of micro and small enterprises via the lens of Law Number 20 of 2008 regarding Micro, Small, and Medium Enterprises (MSME Law) is essential as a cohesive entity.

The Company adheres to the principle of Piercing the corporate veil, which refers to the act of penetrating the protective barrier around a corporation. Thus, the phrase "piercing the corporate veil" refers to the act of lifting the company's protective barrier. Therefore, the phrase "piercing the corporate veil" actually signifies the act of revealing the corporate facade. In corporate law, there exists a principle that is seen as a mechanism to assign liability to others through a legal act executed by the offending corporation, despite the firm itself engaging in the company²²

Similarly, Law Number 40 of 2007 regarding Limited Liability Companies acknowledges the legitimacy of the Piercing the Corporate Veil doctrine by assigning liability to the following parties: (1) Responsibility is delegated to the Shareholders; (2) Responsibility is delegated to the Board of Directors, which, as the governing body of the Company, is entirely accountable for its management in alignment with the Company's interests and objectives, and represents the Company in all legal matters in accordance with the Articles of Association. The author employs the concept of Fiduciary Duty. The fiduciary duty notion designates directors as trustees of the firm, mandating that they exercise care and uphold a duty of loyalty to the organization..²³ The interdependence between legal entities and management establishes a fiduciary obligation relationship between the legal entity and the Board of Directors, wherein management is entrusted to exercise its authority solely for the benefit of the Company..²⁴

The notion of fiduciary obligation is embodied in Indonesia's corporate regulations (UUPT), namely in Article 92, paragraph (1), and Article 97, paragraph (1), of the Constitution, which stipulates the complete accountability of directors in the management of the firm. This rule mandates the directors of a trust to oversee the company's management. The mandate entails full accountability to the board of directors in the management of the corporation, while indicating that the board possesses the utmost authority within the organization.

The notion of good faith constitutes a crucial requirement for the board of directors. This principal duty pertains to the corporation as a whole, rather than to individual or collective shareholders, as dictated by the board of directors' role as the company's trustee. Transgression of the principle of fiduciary responsibility may render directors personally liable for their acts. Fiduciary duty extends to additional parties who possess the trust. Transgressions of the norm of good faith may render directors individually or collectively accountable under both criminal and civil law, contingent upon the demonstration of bad faith by the individual involved.

Moreover, the theoretical framework employed by the author in this study is the theory of responsibility. Hans Kelsen's theory of legal responsibility posits that an individual is legally liable for a specific action, implying that they are vulnerable to sanctions if they act contrary to legal obligations..²⁵ Hans Kelsen asserts that "the failure to exercise the caution mandated by law is termed negligence; error is typically regarded as a distinct form of fault (culpa), albeit

²² Munir Fuady, *Modern Doctrines in Corporate Law and Its Existence in Indonesian Law, Third Edition*, (Bandung: PT Citra Aditya Bakti, 2014), p. Sec. 7.

²³ M. Yahya Harahap, *Limited Liability Company Law*, (Jakarta: Sinar Grafika, 2009), p.379

²⁴ Bismar Nasution, *Company Understanding Based on Law Number 40 of 2007 concerning Limited Liability Companies*, (Medan: BTPN, 2008). p. 55

²⁵ Somardi, *General Theory Of Law and State, Fundamentals of Normative Law as Empirical Descriptive Law*, (Jakarta: BEE Media Indonesia, 2007), p.81

less severe than a fault characterized by the anticipation and intention, whether malicious or not, of harmful outcomes."²⁶

Responsibility, as delineated in legal terminology, is synonymous with liability. The phrase "liability" denotes legal responsibility, particularly that arising from errors made by legal entities. The theory of responsibility focuses on the interpretation of responsibility derived from legal statutes and regulations, thereby defining responsibility as a concept associated with the legal obligations of an individual who may face sanctions for actions that contravene the law..²⁷

IV. CONCLUSION

A limited liability business founded by a single individual, who serves as both the shareholder and the Board of Directors, thereby granting the founder exclusive ownership and complete authority over the company. The board of directors possesses comprehensive rights and powers in executing their responsibilities, with all actions undertaken regarded as the company's actions, provided they adhere to the stipulations of the Articles of Association (*intra vires*) and do not exceed their authority. Provided that the board of directors fulfills its responsibilities and operates within its legal authority (*intra vires*), it cannot be held personally liable.

The legal circumstances that may emerge stem from the regulations concerning shareholders of micro and small enterprises, who bear no personal liability for obligations incurred on behalf of the company and are not accountable for the company's losses beyond their shareholdings. A firm founded by an individual who is both the sole shareholder and a director possesses complete authority over the organization. Indeed, the company's decision-making will be expedited and rendered more efficient with full authority. Nonetheless, the potential for power abuse and corruption is undeniably significant. The doctrine of Piercing the Corporate Veil in an individual limited liability company is articulated in Article 153J, paragraph (1) of the Limited Liability Company Law, which underscores that shareholders of Micro and Small Enterprises bear no personal liability for the company's obligations or losses beyond their respective shareholdings. Nonetheless, exceptions exist whereby shareholders may be held personally liable if: a. the criteria for the Company as a legal entity have not been fulfilled; b. shareholders exhibit bad faith in utilizing the Company for personal gain; c. shareholders are implicated in illegal activities perpetrated by the Company; or d. shareholders unlawfully appropriated the Company's assets, leading to the Company's financial capacity to settle its debts.

Corporation. Consequently, the founder of a sole proprietorship must distinguish between the company's assets and their assets. Due to the absence of a checks and balances mechanism within an individual corporation, there is no external party to offer insight or counsel; thus, the power of attorney, in this instance, the founder, shareholders, and board of directors, must possess self-awareness. This section indicates that the principle of Piercing the Corporate Veil may be applied to the company's management and/or shareholders, specifically the directors, under the oversight of the Company's Board of Commissioners.

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²⁶ Ibid, p. 83

²⁷ Busyra Azheri, *Corporate Social Responsibility from Voluntary to Mandatory*, (Jakarta: Raja Grafindo Perss, 2011) p. 54

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