

Theoretical Foundation and Philosophy of Group of Companies as Legal Entity

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Abstract: The Group of Companies or also referred to as the Holding Company is the strategy of the owner of the company to expand the company's business which originally in a single company into several companies and even into hundreds of companies that stand alone which are all directly and indirectly owned by the ultimate share holder which is usually one family. Companies incorporated in the Company Group are limited liability companies that are subject to Law Number 40 of 2007 concerning Limited Liability Companies. The Group of Companies in Indonesia has not been recognized as a legal entity and has not been regulated by law, but Bank Indonesia and the Financial Services Authority have regulated the Corporate Group for corporate finance that regulates the Legal Lending Limit for companies compiled in the Corporate Group, and related to the fit and proper test for the ultimate share holder. Based on the research using normative law method by seeing the Company Group in terms of legal theory, namely the Legal Entity Theory such as the theory of fiction (Fictie Theorie), Orgaan Theorie (organ theory), juridical reality theory (Juridische Realiteitsleer), Wealth Together Theory (Propiete Collectief Theori) and the Theory of In-house Assets (ambtelijk Vermogen), it can be concluded that the Company Group can be given status as a Legal Entity. In connection with the reality of the existence of the Company Group, and as a basis for the rights and obligations of the Group Company as well as legal protection for various parties, it is time for Indonesia to have a law governing this Company Group.

1 INTRODUCTION

Tri Budiyo (2011), appropriate business studies and selection of business forms. The company is vehicle for those behind the company as tools in economic traffic for profit.

The current forms of the company have grown rapidly from the former in the form of:

1. Civil partnership (maatschaap),
2. Comandeter Venotschaap (CV),
3. Firms,
4. Limited Liability Companies,
5. Cooperatives,
6. Pension Funds, and
7. Now have developed the Group of Companies.

Entrepreneurs have developed a single company into a Group Company. For example, the company groups are:

1. Bakrie Group,
2. Gudang Garam Group,
3. Djarum Group,
4. Humpuss group,

5. Medco Group,
6. Sungai Budi Group,
7. Gudang Garam Group,
8. Kompas Group,
9. Bimantara Group,
10. Sampoerna Group,
11. Maspion Group,
12. Mayora Group and others.

Overseas company groups such as Axa Coca Cola, Unilever, Samsung and others. Even though the Company Group has been developed very rapidly, there are no rules that can cover the Company Group.

Based on the background above, problems can be formulated:

- How is the Company Group seen from legal entity theory?
- How should the law provide legal certainty for the existence of the Company Group?

2 RESEARCH METHODOLOGY

Legal information presented in this study is based on the results of normative legal research. Peter Mahmud Marzuki (Marzuki p. 35, 2007) stated that "a process to find legal rules, legal principles, and legal doctrines in order to answer legal problems faced".

The legal problem or questions raised are how is the company group seen from the legal theory of legal entities? And the second question is how should the law provide legal certainty for the existence of the Company Group?

The legal issues mentioned above, will be discussed in more detail to find legal norms that should be formed. So, this research can provide the legal solutions to the legal issues that have been mentioned above.

3 DISCUSSION

The company group is a set of one or more companies that stand alone as legal subjects, where one of the companies functions as a holding company, even though the company group does not always have a holding company. But from all business entities in the group the company is controlled and owned directly or indirectly by certain people.

A person or certain party who controls and controls most of the shares in the company group is called the ultimate share holder (Widiyono p. 147, 2015). Munir Fuady argued that the point is that through an economic approach, a company group has a parent company and a subsidiary which is an entity (Fuady p. 134, 1999).

Discussion of group companies is actually bigan of the theory of subject of law i.e. everything brings rights and obligations. The theory of this law agency divides subjects other than those laws i.e. legal entity. Despite the fact that behind the Agency inform land there are people that are running the real operational and legal actions in the traffic law. So, including behind a holding company is a "person" as a subject of law, although it is also a legal entity in question remained personified as a subject of law.

The sense of the people in this case is "personal physical". This is to distinguish between the existence of the subject of another law as "private law" or "legal entities. Human being has rights and obligations which have the sense that the legal norms regulating human action in question through a certain way. Norm applies to humans called such personal,

not be automatically applicable to the physical it's personal.

A discussion of the theory of subject of law was the beginning of a discussion of the theory of agency law. As a means of analistis in see Group company as agency law. Understanding of the theory of subject of law and theory of law bodies become very important, to provide a theoretical foundation and skepticism in dissecting the group company as a legal entity. This is necessary in order to provide input in the later changes to the Act No. 40 year 2007 regarding limited liability company that has yet to enter a group.

Law No. 40 of 2007 concerning Limited Liability Companies is still based on a single company. The change in a single company so that it becomes a group of companies is an implication of changes in corporate strategy. To see the Company Group as a legal entity or not a legal entity, an analysis of some legal body theory is needed as follows:

3.1 Fiction Theory (Fictie Theorie)

The theory of fiction (Fictie Theorie) proposed by Frederich Carl von Savigny, that a legal entity is a symbol of a collection of parties (aggregates) related to the legal entity (Budiyono p.21, 2011). Satjipto Rahardjo, stated "In addition to humans, the law still makes fictitious constructs accepted, and is treated and protected like humans. The law is free to decide what was created that originated from his imagination. Furthermore, Satjipto put forward a legal entity created by law, so his death is also determined by the law (Rahardjo p. 74&110, 1986).

This theory suggests that being a legal subject is human, but humans imagine legal entities are legal subjects like humans. Human as a subject of law is the bearer of rights and obligations. Therefore a legal entity formed by human beings as human-like. Thus, the legal entity as the subject of law as well as the bearer of rights and obligations. However, as a result of the creation of man, then the law could do the subject of legal action being represented by its administrator.

Therefore, the company group can become a shadow (fiction) as a legal entity, because the group of companies is a symbol of a group of parties (aggregates) associated with the legal entity. Group of companies as an organization can be granted rights and obligations also by law as human beings.

3.2 Theories of Real Organisms or Theorie van de Organische Rechtspersoonlijkheid

Polano Z.E reacted and stated that the legal entity was there. Legal entities are not fiction but they are true. A legal entity is not a subject-less property, but a real organism, which lives and works like a human (Budiyono p.23, 2011). The purpose of the legal entity is to be collective, regardless of the person behind it. So, every meeting is a legal entity.

This theory is more real and general all society is a legal entity. Because all associations have the intention, effort and collective goals of different human groups with the intention, effort and goal individually. Humans grouped themselves in an Assembly must break away from personal goals. Although each of the humans who gathered in the Assembly has the same slices about the intent and purpose of the effort of all the people who gathered in the Assembly. The same the slivers incarnate becomes common purpose.

Based on this theory, a group of companies is a compendium of companies that stand alone as a legal subject, which is independent of the parties behind it. The parties are the ultimate shareholder and therefore the company group can be given status as a legal entity.

3.3 Juridical Reality Theory (Juridische Realiteitsleer)

The foundation of this theory is Paul Scholten who argues that the legal entity is real and concrete even though it cannot be held, it is not fictitious but a realistic jurische (juridical facts / facts). This theory is needed because for the sake of legal traffic. Therefore, for the sake of the legal traffic, the Company Group can be given status as a legal entity.

This theory operates on the more juridical facts which indeed in society there is a body of law that is required by humans in traffic law. The human body requires the law because human beings as social animals that have a tendency to group which was later transformed into a legal entity. In the body of law that human beings have the collective interests of mankind are gathered in a legal entity. Therefore, the law is the juridical reality.

Therefore, the group of companies is part of juridical development innovation legal company. Group of companies is human needs over the desertification efforts previously chained in a single

company. Juridical interests against the existence of the Group companies for the limited purpose and limited liability business which is a sole company. With a group of the company, then the human need for control of various kinds and economic effort to be open. Therefore, the Group of companies is a juridical fact required by human beings to obtain adequate legal protection.

3.4 Shared Wealth Theory (Propiete Collectief Theori)

Rudolf von Jehring followed by Planiol that the legal body was not an abstraction and not an organism, but all its members together had an eigendom, shared responsibility, rights together. Theory is viewed as a legal entity rights and obligations separate from personal private.

The existence of the legal entity, then the rights of individual beraleh be shared rights and obligations of legal entities established by such persons. Thus legal entities also have a shared treasure of those who set up a legal entity. The wealth of legal entities be separate with the kekayaan of the parties gathered in the body of the law

If this theory, associated with the existence of a company group, the joint wealth of the company group is the ultimate share holder. In the Group the company the wealth ultimate share holder be apart with a wealth of group companies. Group company has the right and duty as well as the responsibility of its own separate from the ultimate share holder

3.5 Theories of Occupational Assets (Ambtelijk Vermorgen)

This theory was developed by Holder and Binder with his follower, FJ. Oud. This theory argues that without the will (wilsvermogen) does not exist as a legal subject and the one who has the will is the administrator (Budiyono p.23, 2011).

Therefore, the right to be attached to the position as administrator is manifested in the company's articles of association. With regard to the owner company group that wishes is the ultimate shareholder.

The company group is real, even Bank Indonesia and the Financial Services Authority have regulated that in Article 1 paragraph (4) PBI No.14 / 24 / PBI / 2012 concerning Sole Ownership in Indonesian Banking has regulated this matter. The provisions of the PBI limit the holding company (Holding company) in the world of Banking (Bank holding Company) is a legal entity that is formed or

owned by the Controlling Shareholders to consolidate and directly control all activities of the banks that become subsidiaries.

Article 5 paragraph (2) provides confirmation that the Holding Company (Bank Holding Company) can only carry out investment activities, which include management services in order to improve the effectiveness of consolidation, business strategy, and financial optimization of controlled business groups. Explanation of Article 2 paragraph 1 gives the understanding that Ultimate Share Holder is a Controlling Shareholder up to the last owner and controller who is required to do a fit and proper test.

4 CONCLUSION

Based on the theories stated above, it can be argued that the company group is clearly present, not fictitious and is required in legal traffic. Company group has joint assets and has the will represented by the owners of the company group namely ultimate share holder.

Group of companies is a juridical reality needed in traffic law to meet human needs to menguassai more economic factors that were previously not possible in the limited liability company is the sole company. Limited liability company has the intent and purpose of the effort is limited and limitative. With the group the company then became open to human beings have different types of venture through, these are controlled by the holding company. Even within the group of companies can have the kind of sja and effort as well as the same objective and consists of many limited liability company under the control of the holding

Therefore, it is possible for the Company Group to be given a star as a legal entity. As for each company that meets in the company group can be given the status of a unit that has its own business field. Discussion of group companies is actually of the theory of subject of law i.e. everything that brings the right and obligations.

The theory of this law agency divides subjects other than those laws i.e. legal entity. Despite the fact that behind the Agency inform land there are people that are running the real operational and legal actions in the traffic law. So including behind a holding company is a "person" as a subject of law, although it is also a legal entity in question remained personified as a subject of law.

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5 SUGGESTION

In Indonesia there is no law that regulates the group companies, although clearly the company Group has existed and developed rapidly. Therefore, to provide legal protection to all parties related to this company group, it is necessary to regulate the status and position of the company group.

In the world, lending and / or financing are obliged to pay attention to the group of companies, both in terms of the Legal Lending Limit (LLL) and related to ultimate shareholders as the top owner in the company group. There are 3 (three) aspects, namely:

1. Financial linkages (consolidation balance),
2. The relationship between management, and
3. Ownership relationships.

This arrangement is also to balance the sense of social justice, namely to limit the accumulation of wealth and the exploitation of nature and all forms of business from upstream to downstream are controlled by just a few people.

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