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Legal Liability of Subsidiaries For Unlawful Actions Committed By The Parent Company (Holding Company) In The Structure of A Limited Liability Company

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Abstract: The group structure of a company consisting of a holding company and a subsidiary company is often used in the business world to expand business activities and manage business risks. In the Indonesian legal system, each limited liability company has the status of an independent legal entity, which means that the legal responsibility of one entity is not necessarily imposed on another entity. However, problems arise when the parent company commits unlawful acts and causes losses, especially if the subsidiary is considered to be involved or a means of implementing the action. This study aims to analyze the extent to which subsidiaries can be held legally liable for unlawful actions committed by the parent company in the limited liability company structure. The method used is normative juridical with relevant legislative approaches, legal doctrines, and case studies. The results of the study show that although the principle of separate legal entities is still recognized, the court can pierce the corporate veil if evidence is found of the dominance of the parent company over the subsidiary as a whole, as well as the involvement of the subsidiary in the unlawful act. Thus, under certain conditions, the subsidiary can be held legally liable if it is proven to have a substantial close relationship with the parent company in the implementation of unlawful actions. These findings reinforce the importance of a strict separation of responsibilities in the corporate group structure, in order to ensure legal certainty and protection for aggrieved third parties.

Keyword: Subsidiaries, Holding Companies, Legal Liability, Unlawful Acts, Limited Liability Companies.

INTRODUCTION

The structure of a Limited Liability Company (PT) as a form of business legal entity that is predominantly used in the business world has undergone significant developments, including in the formation of holding companies or holding companies. In this structure, one entity (the parent company) holds most or all of the shares of one or more other companies (subsidiaries), with the primary objectives of operational integration, management efficiency, and strategic control. In practice, the holding company structure gives rise to complex legal dynamics, especially related to legal responsibility for unlawful acts (onrechtmatige daad) committed by one of the entities in the group of companies.

Normatively, Article 3 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies (UUPT) states that "A Company is a legal entity separate from its shareholders." This principle underlies the doctrine of separation of legal entity (separate legal entity), which ensures that the legal responsibility of a limited liability company is not attached to shareholders, directors, or other companies in the corporate group. However, the reality is that this principle does not always provide justice in the context of a holding-subsidiary, especially if the parent company exercises dominant and excessive control over the subsidiary, even to the point of causing losses to third parties.

The main problem arises when the parent company commits unlawful acts such as manipulation of financial statements, market engineering, environmental violations, or violations of consumer rights that are factually carried out through subsidiary instruments. In many cases, the subsidiary is simply the executor of the policy or an extension of the parent. However, when a lawsuit is filed, it is the subsidiary that is often the target of lawsuits because it has a direct relationship with legal events that harm third parties. This raises a fundamental question about the fairness and clarity of responsibility in the holding company structure: to what extent can subsidiaries be held accountable for unlawful acts driven or controlled by the parent company?

On the other hand, Indonesian law is still very limited in explicitly regulating the concept of liability in the structure of business groups. The Law only recognizes company entities as independent legal units and does not explain the relationship of responsibilities between companies in one group. Meanwhile, the development of business practices shows that the holding company structure can be a strategic and problematic instrument in avoiding legal liability. When the parent company fully controls the operational policies of the subsidiary but takes refuge behind a separate legal status, there is a legal vacuum that allows the abuse of legal forms.

In international jurisprudence, courts in some countries have begun to develop the doctrine of piercing the corporate veil as a mechanism to penetrate the boundaries of legal liability between entities within the corporate group, in particular in order to prevent the abuse of legal forms to avoid liability. However, the application of this doctrine in Indonesia is still very limited and has not been explicitly accommodated in laws and regulations. In fact, in some cases, such as environmental or financial cases involving multinational entities, the responsibility of the parent company is often vague and difficult to reach by national legal mechanisms.

In addition, global economic developments have also encouraged the integration of transnational corporations that are increasingly complex. In many cases, the parent company is domiciled abroad, while the subsidiary operates in Indonesia. In this context, when there is a violation of the law in Indonesian territory, the party that is most legally accessible is the subsidiary. This creates a double burden: on the one hand, subsidiaries are just policy implementers; On the other hand, he had to bear the legal consequences that should be the responsibility of his parents. This unclear limit of liability is one of the sources of legal uncertainty and has the potential to harm not only third parties, but also the subsidiaries themselves.

From the perspective of legal protection for aggrieved third parties, the holding company's structure also leaves serious problems. Victims of unlawful acts are often unable to prove the involvement of the parent company directly because policies or controls are carried out behind closed doors and hidden behind the corporate framework. As a result, victims lose access to a fair remedy because they can only sue entities that are on the surface (subsidiaries) and not the actual mastermind (the parent company). In this case, the legal system is required to be able to respond to modern business dynamics by forming a more adaptive and substantive concept of accountability.

In the context of Indonesian civil law, the provisions regarding unlawful acts are regulated in Article 1365 of the Civil Code which states that every act that violates the law and causes harm to others requires the perpetrator to compensate for the damage. However, the concept of who is referred to as the "actor" becomes blurred in the holding structure, especially when the decisions and orders come from the parent company but are implemented by the subsidiary. Should the direct executor (subsidiary), policy controller (parent company), or both, be responsible? This is a key issue that requires in-depth study normatively and conceptually.

In line with that, a good corporate governance approach also requires accountability at every level of business entities. When the principles of transparency and responsibility are not applied in the holding company's structure, then the legal system should not remain silent. Therefore, the liability of subsidiaries for unlawful acts committed by the parent company is one of the crucial issues in the reform and enforcement of corporate law in Indonesia.

In business practice, this phenomenon not only has an impact on the external relationship between the group of companies and third parties, but also has an internal impact on the position of the board of directors and commissioners of the subsidiary. Often they are formally positioned in strategic positions but do not have policy autonomy, so when an unlawful act occurs, they are held accountable without having real control over the company's decisions. This certainly raises the issue of individual fairness and accountability in the corporate structure.

Based on this description, it can be concluded that there is an urgent need to review the concept of legal liability in the holding company structure, especially regarding whether and to what extent subsidiaries can or should be held liable for unlawful acts committed by the parent company. This study is not only academically and normatively important, but also has a practical impact in building a legal system that is adaptive, fair, and able to provide legal certainty for all parties involved in corporate practices.

Legal Responsibilities in Civil and Corporate Law

Legal liability is basically a legal obligation that arises from the violation of a legal norm that causes losses to other parties. In the context of civil law, legal liability for unlawful acts is regulated in Article 1365 of the Civil Code (KUHPercivil), which states that "every unlawful act, which causes harm to another person, obliges the person who, by mistake, publishes the loss, to compensate for the loss."

Legal liability is born when there is an element of fault, loss, and causal relationship between the act and the loss caused. In the corporate legal framework, these responsibilities become more complex because they involve legal entities as separate legal subjects from shareholders, directors, and other related parties.

In the context of corporations, the basic principle that applies in limited liability company law is that a company as a legal entity is a legally separate entity from its shareholders. This means that legal responsibility is limited to the company itself, and does not automatically attach to the shareholders or parent company in the business group structure. This is the basis for the separation of responsibilities between the subsidiary and the parent company.

Limited Liability Company

A limited liability company is a legal subject with the status of a legal entity whose characteristics are limited liability for shareholders, members of the board of directors and commissioners. In this case, every act carried out by a limited liability company as a legal entity, only the legal entity itself is responsible. The shareholders are not liable, except to the extent of the value of the shares they enter. However, in certain cases there are exceptions to the applicability of the limited liability if it is proven that the following things occur:

1. The Company's requirements as a legal entity have not been or are not met
2. The shareholders concerned either directly or indirectly in bad faith use the Company for personal gain
3. The shareholders concerned are involved in unlawful acts committed by the Company
4. The shareholders concerned either directly or indirectly illegally use the Company's wealth, which results in the Company's wealth being insufficient to pay off the Company's debts.

Holding Company Structure in a Limited Liability Company

A holding company or holding company is a company that owns a controlling stake in one or more other companies (subsidiaries), so that it is able to control the policy direction and operational activities of the subsidiary. The structure of holding companies in Indonesia is not explicitly regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), but its existence is recognized in modern business practices.

A holding company or also called a holding company in Indonesian, is a company that aims to own shares in one or more other companies and/or regulate one or more of those other companies. Usually, a holding company has many companies engaged in very different business fields. The companies that are members of the group to be discussed are those in the form of Limited Liability Companies which are hereinafter referred to as PT, so that each company has the status of a legal entity. However, if you look deeply, the companies in the group company are owned by the same capital owner so that it can be said to be a unit of economic activity groups.

According to Munir Fuady, holding companies have broad power in controlling subsidiaries, both in terms of management, finance, and operations. However, the legal responsibility of the parent company does not necessarily follow the actions of the subsidiary or vice versa, because each entity has a separate legal entity status.

As a form of vertical integration in the business world, the subsidiary holding structure opens up great opportunities for potential abuse, especially when the parent company uses the subsidiary as a tool to carry out actions that are contrary to the law, with the intention of avoiding direct legal liability. This is where a debate arises about the relevance of the concept of mutual responsibility and the legal mechanism that allows for the interconnectedness of responsibilities between entities in the group of companies.

METHOD

Types of Research

This research uses normative or doctrinal legal research methods, which are research that focuses on the analysis of legal norms written in laws and regulations, legal literature, and court decisions. Normative research aims to identify legal principles, doctrines, and legal principles that are relevant in formulating arguments and finding solutions to the legal problems raised.

Research Approach

The types of approaches used in this study consist of the following approaches:

1. **Statute Approach**

   This approach is carried out by examining and analyzing laws and regulations related to legal responsibilities in Limited Liability Companies, such as Law Number 40 of 2007 concerning Limited Liability Companies, the Civil Code (KUHPer), and other relevant regulations.
2. **Conceptual Approach**

   This approach is used to understand important concepts such as *separate legal entities*, *piercing the corporate veil*, and holding company structures, both from the perspective of legal theory and from the literature developed by legal experts.

Types and Sources of Legal Substances

This research uses the following legal materials:

a. **Primary Legal Materials**, which are binding legal materials, such as:
   1. Law Number 40 of 2007 concerning Limited Liability Companies.
   2. Civil Code (KUHPerdata).
   3. Relevant court rulings.

b. **Secondary Legal Materials**, which are legal materials that provide explanations of primary legal materials, such as:
   1. Legal textbooks.
   2. Scientific journals, legal articles, and relevant legal scientist writings.
   3. Guidance from a legal organization or legal study institution.

Legal Material Collection Techniques

The collection of legal materials is carried out through library *research*, namely by tracing laws and regulations, reading relevant legal literature, and examining jurisprudence related to the problem being studied. Legal sources are obtained from faculty libraries, national libraries, online legal databases, and legal scientific journals.

Legal Materials Analysis Techniques

The analysis of legal materials is carried out in a normative qualitative manner, namely by interpreting and examining positive legal provisions, legal doctrines, and court decisions to be compiled into a systematic legal argument. This research does not use a statistical or quantitative approach, but emphasizes on legal logic, normative consistency, and relevance between legal concepts and practical reality.

RESULTS AND DISCUSSION

The Form and Structure of the Legal Relationship Between the Parent Company and the Subsidiary in the Limited Liability Company System According to Indonesian Positive Law

According to Emmy Pangaribuan's view, a group company is a collection of several companies that, although legally independent, have a very close relationship with each other so that they form an economic entity controlled by one parent company as the central authority. The formation of a group company is generally caused by a company's desire to expand its business activities through the establishment of subsidiaries, both domestically and abroad.

The formation of a group company cannot be separated from the economic motives that underlie it, such as business interests and corporate strategies aimed at entering certain business sectors. This is done so that the company can create synergy between entities in the group, thereby generating added value that supports the company's overall competitiveness in the midst of market competition. In addition, the long-term funds that have been raised also encourage companies to form new entities as part of the group.

The general structure of a group company usually consists of a parent company and one or more subsidiaries. The parent company acts as the main controller that regulates and coordinates the activities of its subsidiaries in one integrated economic system. The central functions performed by the parent company indicate that the entity has the capacity to direct or influence important decisions within the group. These influences can limit or dominate the rights of other companies. Since the parent company performs the function of coordination and supervision of the subsidiary company centrally, this role reflects the main function of a holding company.

Meanwhile, the definition of a subsidiary company or "subsidiary" based on the Explanatory Memorandum of Article 29 of Law No. 1 of 1995 (UUPT before Law No. 40 of 2007) is a company that has a special relationship with other companies that occur because:

a. more than 50% (fifty percent) of its shares are owned by its parent company
b. more than 50% (fifty percent) of the votes in the GMS are controlled by the parent company
c. Control over the company's operations, appointments, and dismissals of directors and commissioners is greatly influenced by its parent company.

Subsidiaries, which are generally in the form of Limited Liability Companies, are separate legal entities that have independence and a separate legal existence from other entities. As a legal entity, a subsidiary has inherent rights and obligations, as well as controls wealth that is not mixed with the wealth of its shareholders, including in this case if the shareholder is the parent company.

The relationship between a parent company and a subsidiary is basically a relationship between the owner of the shares (i.e. the parent company) and the corporate entity (subsidiary) whose shares are owned. This relationship is explicitly regulated in the Articles of Association of the subsidiary company and is subject to the provisions of applicable law. On the other hand, the relationship between the parent and the subsidiary can also reflect an employment relationship, namely the relationship between the party that owns the business entity and its workers, which is born based on an employment agreement.

In essence, an employment relationship is a form of legal bond between the giver and the recipient of a job based on an employment agreement, which in its implementation can be in the form of business management or the implementation of certain tasks. In addition to the employment relationship, the relationship between the parent and the subsidiary can also reflect other forms of relationship in the context of the business entity's activities.

In general, individuals who have other relationships are not employees in the formal sense, but still play a role in representing the corporation to act legally on behalf of the legal entity. This representative can be based on:

1. Direct grant of power
2. Provisions in the agreement that implicitly include the granting of power of attorney
3. Delegation of certain authority from the authorized parties in the corporation.

The ideal concept of legal liability in the relationship between the parent company and the subsidiary to provide certainty and fairness to third parties

Etymologically, legal responsibility or *liability* is often exchanged for *responsibility.* The definition of responsibility for the Great Dictionary of the Indonesian Language is a state of obligation to bear everything, if something happens it can be sued, blamed, litigated and so on. Legal liability can be distinguished between individual liability and collective liability. In the Commercial Law (KUHD) Article 40 paragraph (2) it is stated that shareholders are not responsible for more than the full amount of the shares. The same principle is also enforced by the Limited Liability Company Law which expressly states that "Limited Liability Company is a legal entity and its liability is only limited to shares that have been taken by shareholders" (Article 3 paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies).

However, the Limited Liability Company Law emphasizes that there are several exceptions to the principle of limited liability of the legal entity concerned, including to attract the parent company as a shareholder to take responsibility for the actions of its subsidiaries. Based on Law Number 40 of 2007 Article 3 paragraph (2) which states that the provisions as referred to in paragraph (1) do not apply if:

1. the Company's requirements as a legal entity have not been fulfilled or are not met
2. the shareholders concerned either directly or indirectly in bad faith using the Company for the benefit of 6 individuals

3. the shareholders concerned are involved in unlawful acts committed by the Company
4. the shareholders concerned either directly or indirectly illegally use the Company's wealth, which results in the Company's wealth being insufficient to pay off the Company's debts.

In the Indonesian legal system, the basic principle underlying the existence of a legal entity, including a Limited Liability Company (PT), is that a legal entity has its own legal personality that is separate from its founders, shareholders, and management. This is known as the principle *of separate legal entity*. In the context of a group of companies or holding *and subsidiary companies*, each entity remains considered a juridically independent legal entity, even though economically, operationally, or managerically they often operate in an integrated manner. Therefore, in general principle, a subsidiary cannot be held liable for unlawful acts committed by its parent company. However, in practice, there are exceptions that give rise to their own legal complexity.

A subsidiary's legal liability for unlawful acts committed by the parent company can be understood through a variety of legal perspectives, ranging from civil law principles to modern corporate doctrines such as *piercing the corporate veil*. In this doctrine, the court can break through the veil of separation between the legal entity of the company and its shareholders if it is found that the legal entity is being abused, for example to cover up fraud, fraudulent acts, or evasion of legal liability. In the holding company structure, if the parent company abuses its control over the subsidiary for purposes contrary to law or propriety, then the principle of separation of responsibilities can be set aside in order to ensure justice and legal certainty.

Even so, the doctrine of *piercing the corporate veil* is generally used to draw the responsibility of shareholders (in this case the parent company) for the actions of the subsidiary. However, in certain cases, if the subsidiary has direct involvement in the implementation of the parent's unlawful order or policy, or if the subsidiary functions only as *an alter ego* of the parent company, then legal responsibility may also be directed to the subsidiary. This is possible because in many cases, although formally the subsidiary has its own management, substantively all policy directions and business decisions are determined by the parent company, either through the majority shareholder or through other structural controls.

In the Indonesian legal system, the provisions regarding the liability of legal entities in general are contained in Article 1365 of the Civil Code (KUHPercivil) which states that every act that is against the law and causes harm to others, obliges the perpetrator to compensate for the loss. If the parent company commits an unlawful act that has an impact on a third party, and the subsidiary is known to be involved in the execution or benefiting from such acts, then the aggrieved third party can demand liability from the subsidiary. Even more so if the proof shows that the subsidiary does not have independence in decision-making and is only a means of implementing the parent company.

The relationship between the parent and the subsidiary as regulated in the Articles of Association, the group's internal agreement, and the managerial structure, can be the basis of proof in legal cases. If for example it is found that the subsidiary does not have an independent management system and the entire strategic policy is determined by the parent company, then the existence of the subsidiary can be seen as only an extension of the parent. In this context, the principle of shared responsibility can be applied, and the subsidiary can be held liable for losses incurred by the parent.

In addition, in modern business practices, group corporate structures are often used to separate venture risks or avoid legal liability. For example, the parent company forms a subsidiary to run certain high-risk businesses, but still controls all business activities through the appointment of directors and direct supervision. If in practice the parent company commits unlawful acts such as environmental violations, tax evasion, or investment fraud and the subsidiary becomes the beneficiary or even becomes the main instrument in the implementation of these actions, then legally the subsidiary can be held indirectly liable.

In international jurisprudence, there are already many precedents that show that courts are willing to break the boundaries of legal formality if it is found that there is economic unity and total domination between the parent and the subsidiary. Courts in the United States and Europe have repeatedly held subsidiaries liable if they become an integral part of an unlawful scheme controlled by the parent company. In the Indonesian context, although there have not been many court decisions that explicitly address the liability of subsidiaries for the actions of the parent company, the direction of thinking towards substantive legal protection is growing, especially when courts consider aspects of fairness and the principle of prudence in the business world.

Therefore, it is important for each subsidiary entity to maintain its structural and operational independence so that it is not easily drawn into legal liability for the actions of the parent company. This can be done through the preparation of a clear articles of association, the separation of corporate organs, and autonomous and accountable business management. In the event of a lawsuit, subsidiaries who are able to prove that they carry out their activities independently and are not directly involved in unlawful acts committed by the parent company, can avoid collective legal liability.

Nevertheless, in many complex situations, the proof of the relationship and role of the subsidiary to the parent company becomes a crucial point. If it is proven that the subsidiary knew and participated in the unlawful implementation of the policies of its parent, then they cannot take refuge under the pretext of a separate legal entity. In this context, the law not only assesses the formal form, but also assesses the substance of the actual relationships, intentions, and actions of the parties in the corporate group structure.

CONCLUSION

Based on the description that has been explained, it can be concluded that in the Indonesian legal system, the principle of separation of legal entities between the parent company and the subsidiary remains the main foundation in the structure of a limited liability company. Each legal entity has its own responsibilities and obligations, and cannot be held directly liable for the legal actions of other parties, including its parent or subsidiary, as long as there is no evidence of direct involvement or abuse of the corporate structure. However, this principle is not absolute. In practice, if it is proven that the subsidiary plays an active role in implementing, facilitating, or profiting from unlawful actions committed by the parent company, then the subsidiary can be held legally liable. This is also true in situations where the subsidiary only serves as a tool or extension of the parent company without any real autonomy, so the principle of *piercing the corporate veil* can be enforced.

Therefore, the legal responsibility of subsidiaries in the holding company structure is highly dependent on the factual and substantial relationship between the two, both in terms of ownership structure, decision-making, and operational management. For this reason, a clear separation of authority, responsibility, and financial management between the parent and the subsidiary is very important to avoid the expansion of unwanted legal liability. With the development of increasingly complex modern corporate structures, the legal approach to corporate responsibility also requires courts and policymakers to not only look at the formal form of a legal entity, but also assess the substance of the relationship and the intention of the parties in carrying out business activities. This approach is important to ensure legal certainty, justice, and protection for third parties harmed by unlawful acts that occur within the scope of the corporate group.

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