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Implications of Unlawful Actions by Directors Using the Name of a Limited Liability Company Without Going Through a GMS in Carrying Out Personal Debt Borrowings

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Abstract: This article is entitled Implications of unlawful acts by directors who use the name of a limited liability company without going through a GMS using normative juridical research methods, with a statute approach and a conceptual approach. The results of the analysis are the implications of unlawful actions by directors who use the name of a limited liability company without going through a GMS in borrowing personal debts, which do not provide binding legal force in terms of collection from the Limited Liability Company, because the conditions for the validity of the agreement are something that is halal or does not conflict with the law. The invitation was not fulfilled, because in the regulations it is stated that carrying out important policies and steps for a company requires making a request for the EGMS to be implemented. However, the debt and receivables agreement remains personally binding on the directors who incur the debt.

Keyword: Unlawful Actions, GMS, PT, Debt.

INTRODUCTION

Nowadays, many PT (Limited Liability Companies) have been established in Indonesia. There are various types of companies that have been established, such as closed companies and open companies. PT (Limited Liability Company) is a legal entity or partnership that has been approved by the Ministry of Law and Human Rights (Ministry of Law and Human Rights). PT (Limited Liability Company) is a Legal Entity which is a capital partnership, established based on the principle of agreement, carrying out business activities with authorized capital which is completely divided into shares and fulfills the requirements specified in the laws and regulations as well as implementation requirements. (Augusta, 2021) . PT (Limited Liability Company) is currently in the modern era where business competition is very competitive so it requires a lot of additional capital to develop and maintain the business so that it can survive. Carrying out debt borrowing for the collective benefit of maintaining the financial stability of a PT (Limited Liability Company) is by utilizing credit in banking using procedures that have been determined by the Bank and Law No. 40 of 2007 concerning Limited Liability Companies. Shareholders who are owners

(owners, eignenaar) of a company carry out control and supervision over assets as well as making management policies implemented by PY (Limited Liability Company) management.

A General Meeting of Shareholders can only be held if at the General Meeting of Shareholders more than half (one half) of the total number of shares with voting rights are present or represented, unless the Law and/or articles of association stipulate a greater number of quorums. . And if the quorum as intended in paragraph (1) is not met, a summons for a second General Meeting of Shareholders can be held. The General Meeting of Shareholders can be used by the majority Shareholders for their interests. Protection for minority shareholders is to prepare a quorum of the Articles of Association that is different from the quorum provisions of the Limited Liability Company Law, but does not conflict with the Limited Liability Company Law. (Yuwono, 2015) . And when calling for the second General Meeting of Shareholders as intended in paragraph two (2), it is valid and a decision can be made if at the General Meeting of Shareholders at least 1/3 (one third) of the total number of shares or representatives are represented. Except that the articles of association stipulate a larger quorum (provision in article 86 paragraph 4 UUPT). In this case, if the quorum for the second General Meeting of Shareholders as stated in article 86 paragraph (4) is not met, the PT (Limited Liability Company) can make a request to the Chairman of the PN (District Court) which is in the jurisdiction of the PT (Limited Liability Company) position. established in order to determine a quorum for the third General Meeting of Shareholders (Decree in article 86 paragraph 5). General Meeting of Shareholders which has a time limit regarding the implementation of the second and third General Meeting of Shareholders no later than 10 (ten) days from and no later than 21 (twenty one) days after the General Meeting of Shareholders which precedes it is held, in accordance with the provisions Article 86 paragraph 9 UUPT (Limited Company Law) is an issue decided by the MK (Constitutional Court).

In this case, article 86 paragraph 9 of Law No. 40 of 2007 concerning PT (Limited Liability Companies) was submitted to the MK (Constitutional Court) in Constitutional Court decision No. 84/PUU-XI/2013, in which the MK (Constitutional Court) granted the CEO's request. PT. Metro Mini, which took issue with Article 86 Paragraph 9 of Law No. 40 of 2007. In its decision the MK (Constitutional Court) gave a constitutional interpretation which made allowances for the results of the GMS (General Meeting of Shareholders) by the Ministry of Law and Human Rights (Ministry of Law and Human Rights). Based on Law No. 40 of 2007 concerning PT (Limited Liability Companies) that a PT (Limited Liability Company) has 3 (three) organs consisting of: General Meeting of Shareholders, Board of Commissioners and Directors. The three organs of the PT (limited liability company) are side by side and parallel in carrying out their authority as regulated in Law No. 40 of 2007 concerning PT (limited liability company). In article 75 Paragraph (1) the General Meeting of Shareholders (GMS) has authority that is not obtained from the Directors or Members of the Board of Commissioners, within the limits determined by the Law and/or by the articles of association of the PT (limited liability company) (Ambara & Purwanto, 2020) . In general, here the function of the General Meeting of Shareholders or the authority granted by the General Meeting of Shareholders is authority which means that it is not given by the Directors and Members of the Board of Commissioners and is carried out by the General Meeting of Shareholders.

Pay attention to the implementation side, the time for holding it based on Article 78 Paragraph (10) is differentiated or classified into two types of General Shareholder Meetings, namely the Annual General Meeting of Shareholders and other General Meetings of Shareholders. The annual General Meeting of Shareholders is a type of General Meeting of Shareholders which must be held every year by a PT (Limited Liability Company) without exception, if held no later than six months after the financial year has ended.

Meanwhile, other General Meetings of Shareholders can be held at any time by the Company's Organs based on the interests and needs of the PT (limited liability company) based on Article 78 Paragraph (1) of Law No. 40 of 2007 concerning PT (Limited Liability Company). Extraordinary General Meeting of Shareholders can be held at any time for the interests or needs of the company. For example, if the Organs of a company will carry out a debt loan under the name of PT (limited liability company), an Extraordinary General Meeting of Shareholders can be held based on the request of the shareholders, members of the Board of Commissioners or Directors. (Wicaksono, 2016) .

If the Board of Directors is negligent in holding an Extraordinary General Meeting of Shareholders within a period of (15) fifteen calendar days from the time the letter of request is received, then the Board of Commissioners or the shareholders concerned have the right to call their own Extraordinary General Meeting of Shareholders. . In this case, the Board of Commissioners or Directors do not summon the Extraordinary General Meeting of Shareholders within the period mentioned above, shareholders who request the implementation of the Extraordinary General Meeting of Shareholders can submit their request to the Chairman of the PN (District Court) whose jurisdiction is covers the domicile area of the company to obtain permission for the applicant to carry out the summons for the Extraordinary General Meeting of Shareholders himself. After hearing the Petitioner and summoning the Petitioner, the Directors or Members of the Board of Commissioners, the Chairman of the PN (District Court) makes a determination to grant permission for the Extraordinary General Meeting of Shareholders if the Petitioner has proven that the requirements have been fulfilled by the Petitioner and have a normal interest for the PT (limited liability company) in holding the Extraordinary General Meeting of Shareholders.

Based on the background of the problem above, the author draws legal issues What are the implications of the unlawful act of using the name of a limited liability company without going through a GMS when borrowing personal debt ?

METHOD

The technique for writing this article uses legal research methods with normative research types, using *statute approaches* and *conceptual research approaches* As for secondary data sources, namely using primary legal materials in the form of regulations that are relevant to legal issues, and secondary legal materials which are legal opinions and theories that are relevant to the legal issues in this writing. The data collection technique used is using a documentation guide from secondary data sources. This writing uses descriptive analysis techniques with deductive thinking methods *approaches*.

RESULTS AND DISCUSSION

Rechtband is a legal bond which means a legal relationship in which all parties agree to act and do something based on the law which contains several terms or conditions, both objects and objects clearly, so that if at any time an action occurs that could cause loss to one of the parties or one of the parties does not fulfill their obligations voluntarily, then one of the parties or the other party who feels that they have been harmed or their rights have been confiscated can sue the court in accordance with the contents of the agreement that has been made based on the agreement of the parties. One of the related parties is an agreement regarding debts and receivables (Halipah et al., 2023) . Discussing debts and receivables is not something new, because in reality we encounter debts and receivables very often, especially in the business world. Debts and receivables are the practice of borrowing and lending something in the form of money carried out by someone with another person which is usually made in an agreement. The agreement itself is regulated by civil law provisions. According to the definition, debts and receivables are agreements in the form of borrowing and borrowing money that are executed between one party and another party with the object

of the agreement being money. In a debt and receivable agreement, the party giving the loan is called the creditor, while the party receiving the loan is the debtor. Regarding money used as a loan object, a time limit will be given for its return in accordance with what has been agreed in the debt and receivables act as stated in the model debt and receivables agreement between the debtor and the debtor, which is not without risk. Because basically the risk is for the possibility that will occur if the debtor is not obliged to pay the debt in full or in cash or because of certain beliefs or reasons experienced by the debtor.

In accordance with Article 1313 of the Civil Code (Civil Code) that an agreement is an act in which one or more people mutually bind themselves to another or more people. Meanwhile, according to Subekti's view, "An agreement is an event where one person makes a promise to another person or where two people promise each other to do something. The agreement itself is a matter that gives rise to an agreement. In an agreement there are two parties involved, the party who has rights and the party who has obligations. Or with another definition, namely, one party has the right to achievements, and the other party is obliged to carry out the fulfillment of these achievements. In terms of forming an agreement, all related parties must determine how to form an agreement. Based on article 1320 of the Civil Code (Civil Code), the requirements for whether an agreement is valid or not require 4 conditions, namely (Kamagi, 2018) :

1. Agreement between each party.
2. Proficient in making deals.
3. There is something to be agreed upon.
4. It is not a violation of statutory regulations or anything halal.

Contract law in Indonesia has an open nature, namely giving the widest possible freedom to anyone in forming an agreement whose nature and content are as desired. As long as it does not violate applicable laws and regulations, decency and public order. In general, the obligations and rights created by the agreement will be fulfilled by all parties, both debtors and creditors. However, in reality what happens is that one of the parties sometimes does not comply with his obligations and this is what is called "default". The term default comes from the Dutch word for bad performance. Apart from this, default can also be interpreted as breaking an agreement, breaking a promise, or being negligent, if the debtor carries out or performs an act that should not be carried out. (Island et al., 2021) . The agreement also applies to the establishment of a Limited Liability Company, based on the provisions of the Limited Liability Company Law, a PT (Limited Liability Company) is established based on terms agreed upon by 2 (two) or more people and/or legal entities. Because a PT (limited liability company) is established based on an agreement between one founder and another founder, then in establishing a PT (limited liability company) it is mandatory to comply with the legal provisions of the agreement as regulated in Book Three, Chapter Two of the Civil Code. (Civil Code). The founder of the company, in establishing a PT (limited liability company), deposits some capital into the cash of the PT (limited liability company) which is divided into shares. Therefore, the founding parties of the PT (limited liability company) can also be said to be shareholders. The shares owned are a sign as proof that a person or legal entity owns a PT (limited liability company) (Noer & Handoko, 2023) .

Shares in a PT (limited liability company) are issued in the name of the owner, whose share ownership can be proven by means of a letter which is often also called a share certificate. However, the shares may also not have physical form, so the shares are only in the form of an account in the name of the share owner which can be proven from the share owner who has been recorded in a Notarial deed and is also registered in the Legal Entity Administration System of the Ministry of Law and Human Rights (Ministry of Law and Human Rights).) Indonesian country (Rizqy Putra, 2021) . Each of these shares has a nominal value as determined in the articles of association. In other words, shares have an economic value or transaction value that can be transferred, one of which is by inheriting a

share. In carrying out all healthy activities, Limited Liability Companies hold General Meetings of Shareholders, in adopting policies related to the company. EGMS (Extraordinary General Meeting of Shareholders) can be held at any time if necessary and required by the company in a very diverse manner, namely for activities that do not fall within the scope of the annual RUPS (General Meeting of Shareholders). Basically, company activities that require approval from the extraordinary GMS (General Meeting of Shareholders) of a PT (limited liability company) are as follows (Rizkianti, 2020) :

1. Activities that require approval from the GMS (General Meeting of Shareholders) as stated in the limited liability company's articles of association
2. Activities that require approval from the GMS (General Meeting of Shareholders) as stated in the applicable statutory regulations.
3. It would be better if activities that are considered very important to the company are carried out with the approval of the GMS (General Meeting of Shareholders), even though they are not required by the articles of association or the provisions of the applicable laws.

EGMS is a GMS whose implementation is not mandatory to be held every year, but can be held at any time if the company's interests require a General Meeting of Shareholders to be held. The implementation of the Extraordinary General Meeting of Shareholders is stipulated in Article 79 paragraphs (1) and (2) of Law No. 40 of 2007 concerning PT (Limited Liability Companies), where based on this provision, the Extraordinary General Meeting of Shareholders can be held based on the Board of Directors' own initiative. , at the request of 1 (one) or more shareholders who together represent 1/10 (one tenth) or more of the total number of shares with voting rights, unless the articles of association stipulate a smaller number, or at the request of the Board Commissioner.

Directors in borrowing debts from other parties using the name of a limited liability company, legally according to Article 1320 of the Civil Code, the agreement is not valid for the company, however, it remains personally binding on the directors who are incurring the debt. This is due to the legal flaws in the debt agreement when viewed from the conditions for the validity of the agreement, namely "something that is halal". This can be seen from the fact that if the board of directors enters into a debt agreement, the debt provider should request a trust power of attorney from the company for him/herself in entering into a debt and receivables agreement on behalf of the company. This negligence, which cannot be done by the debt provider, has implications for losses from the debt provider and also the impact that arises, namely, the debt provider cannot make legal collections against the company but instead the collection can only be carried out against the legal subject of the director who is in debt.

CONCLUSION

The implications of unlawful acts by directors who use the name of a limited liability company without going through the GMS in borrowing personal debts do not provide binding legal force in terms of collection from the Limited Liability Company, because the conditions for the validity of the agreement are "something that is halal or does not conflict with the law" does not fulfilled, because the regulations stipulate that carrying out important policies and steps for a company must make a request for the EGMS to be implemented. However, the debt and receivables agreement remains personally binding on the directors who incur the debt.

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