

Legal Consequences of Limited Liability Company Law Which Has Not Been Given Legal Status Under Law

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by:;Husniah, Zainal Asikin, Kurniawan

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Legal Consequences of Limited Liability Company Law Which Has Not Been Given Legal Status Under Law No. 40 of 2007

Husniah¹; Zainal Asikin²; Kurniawan²

¹ Graduate Program Student in Notary, Faculty of Law, Mataram University, Indonesia

² Lecturer on Graduate Program in Notary, Faculty of Law, Mataram University, Indonesia

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Abstract

Business or limited liability company that has not been legally must be thrust to obtain legal protection as stipulated in the laws of the limited liability company contained in Chapter XIII of transitional provisions, article 157 paragraph (2) of law number 40 of 2007 which says "The Articles of Association of the company that have not obtained the status of the legal entity or the articles of association that changes have not been approved or reported to the minister when this Law entered into force , must be adapted to this law.". It Also explained in the regulation of the Minister of Justice and Human Rights of the Republic of Indonesia number: M-01-Ht. 01-10 of 2007 on The Procedure To Apply For Ratification Of Legal Entity, described in Article 6 paragraph (5) of this Ministerial Regulation also explained that in case of application to obtain decree of the Minister is not filed within 60 (sixty) days from the date of the establishment deed signed, then the deed of establishment since the passage of the period and the company that has not obtained the status of the legal entity dislodged due to law And his preaching was done by the founder. The impact caused by a company that has not obtained the status of a legal entity is very vulnerable, one of the impacts is that it will result in the establishment of the company based on the decision of the District Court in the application of prosecutors or stakeholders, as explained in the law of limited liability company number 40 of 2007, contained in Chapter XIII Transitional provisions, article 157 paragraph 4. Business that does not have a legal entity yet, certainly affects the effort in case of legal issues. Clearly an integral responsibility with the ownership of a business. So individuals should be aware of the responsibility of business accountability when the business is not yet a legal entity.

Keywords: *Limited Liability Company; Legal Consequences; Legal Entity Status*

Introduction

The development of economic activities in the community, entrepreneurs and state-owned enterprises is growing rapidly, economic activities in order to improve the welfare of every activity undertaken by the community to improve the economy of the family there is a company in the form of

corporate Commander (CV), Firm (FA) and others.¹ Activities in the establishment of the company legally in law number 40 of 2007 about the limited liability company.

The establishment of this company or business is formed in an effort to carry out business functions regularly. The impact will expand to affect the business activity and the existence of its employees. Therefore the importance of the role of business in carrying out its function, it needs to be arranged properly and correctly.² With the company setting in the form of legal entity, aims to maintain the comfort of economic investment efforts globally.

The establishment of a business or a company that does not have legal entities is also growing rapidly now. The establishment of a Community business does not be a legal entity, certainly giving legal consequences related to the consequences of the law.³ For that there must be a clear arrangement referring to the existing legislation. If there is a problem related to a business or a company that has not been incorporated, of course the treatment and its legal consequences on liability in the event of loss of business to the understanding of the existence of business or company that has not become a legal entity required socialization, the appeal in the framework of business protection for the community to the business.⁴

¹ Business or limited liability company that has not been legally must be thrust to obtain legal protection as stipulated in the laws of the limited liability company contained in Chapter XIII of transitional provisions, article 157 paragraph (2) of law number 40 of 2007 which says "The Articles of Association of the company that have not obtained the status of the legal entity or the articles of association that changes have not been approved or reported to the minister when this Law entered into force, must be adapted to this law". Also explained in the regulation of the Minister of Justice and Human Rights of the Republic of Indonesia number: M-01-Ht. 01-10 of 2007 on the procedure to apply for ratification of legal entity, described in Article 6 paragraph (5) of this ministerial regulation also explains that in case of application to obtain decree of the Minister is not filed within 60 (sixty) days from the date of the establishment deed signed, then the deed of establishment since the passage of the period and the company that has not obtained the status of the legal entity dislodged due to law And his preaching was done by the founder.

⁸ This is related to the nature of the company that in the establishment of a legal entity can conduct business activities in activities to improve the economy according to human. Expansion of business and meaning of the applicability of enterprises or companies that are legal entity more comfortable, assured in the existing legislation. Thus comfort in the effort of legal protection in the effort is important to improve the effort done.⁵ The impact caused by a company that has not obtained the status of a legal entity is very vulnerable, one of the impacts is that it will result in the establishment of the company based on the decision of the District Court in the application of prosecutors or stakeholders, as explained in the law of limited liability company number 40 of 2007, contained in chapter XIII Transitional provisions, article 157 paragraph 4.

¹ Business that does not have a legal entity yet, certainly affects the effort in case of legal issues. Clearly an integral responsibility with the ownership of a business. So individuals should be aware of the responsibility of business accountability when the business is not yet a legal entity. This study aims to answer the following questions:

¹ Chaidir Ali, Badan Hukum, PT. Alumni, Bandung, 2005, p. 20.

² Abdulkadir Muhammad, Hukum Perusahaan Indonesia, Citra Aditya Bakti, Bandung, 2006, p. 21.

³ <http://rangsubudi.wordpress.com/2011/08/20/Struktur-Badan-Hukum-Perseroan-Terbatas-berdasarkan-undang-undang-nomor-40-tahun-2007-tentang-Perseroan-Terbatas>.

⁴ Ali Ridho, Badan Hukum Dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf, cetakan ke IV, Alumni, Bandung, 1986, p. 54.

⁵ <http://www.daftarbisnis.net/2009/12/01/Kelebihan-Dan-Kelemahan-Perseroan-Terbatas>, on 23 December 2019.

3. How is the mechanism of legal entity endorsement of Limited Liability Company established prior to the issuance of law number 40 of 2007 about the limited liability company?
2. How is the legal effect of a limited liability company that has not obtained the status of the legal entity under Law No. 40 of 2007 about the limited liability company?
3. How is the responsibility of the Board of directors to the limited liability company whose establishment has not been adjusted by law number 40 of 2007 about the limited liability company?

Methodology

Types of Research

22. Type of research in this proposal is normative law research using normative case study in the form of legal behavior products, such as reviewing and analyzing the laws and regulations, in particular Law number 40 of 2007 about the limited liability company, as well as other regulations related to this research.

Approach of Research

A research approach is a method or way of conducting research.⁶ This research is qualitative analysis, which aims to explain the existing data with words or statements not by numbers. Describe in detail, study and analyse the rules of the invitation, specifically law number 40 of 2007 about the limited liability company.

This research is conducted using *normative juridical* approach⁷, which is as an approach done based on key legal material by studying the theories, concepts, principles and regulations (*statute approach*)⁸ which is related to this research. In particular regarding the “Legal Consequences of Limited Liability Company Which Has Not Received Legal Status Under Law No. 40 Of 2007”.

Source of Legal Material

26. The Data in this study was obtained by collecting primary legal materials, secondary legal materials, and tertiary legal materials.

23. The matters examined in normative legal research include several things such as legal principles, legal systematics, legal synchronization levels, legal comparisons and legal history. In research of course requires a source of legal material, as with this normative legal research also has a legal source such as:

The primary legal material is a substance that binds to the problems that will be researched. For example law number 40 of 2007, about the limited liability company and regulation of the Minister of Law and Human Rights of the Republic of Indonesia number: M-01-Ht. 01-10 of 2007 concerning procedure to apply for ratification of legal entities or other regulations relating to the problems that will be researched.

Secondary legal materials are materials or data that provide explanations about the primary legal material. Examples are the results of research, scientific work from scholars and others.

⁶ Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktek*, Rieneka Cipta, Jakarta, 2002, p. 23.

⁷ Roni Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri*, Ghalia Indonesia, Semarang, 1998, p. 34.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, cetakan II, Jakarta Kencana, 2008, p. 29.

Third, the source of tertiary law is data materials that provide information about primary and secondary law. Examples include legal language dictionaries, encyclopedias, and others.⁹

Method of Collecting Legal Materials

In order to obtain results that are scientifically objective and can be proved correct and can also be accounted for results, then the data in this research obtained through the method of collecting legal materials, which are using: library research, that is done to collect secondary legal material in the form of legal material either primary, secondary and tertiary related to the research material, which is arranged in the literature and regulations applicable law, in particular the law number 40 of 2007 about the limited liability company.

Legal Collection Tools

The technique of collecting legal materials in this study uses literature studies. The literature study is conducted by reading, studying and analyzing the laws and regulations, in particular the law number 40 of 2007 about the limited liability company and other ministerial regulations relating to the issues to be researched.

Legal Material Analysis

The analysis of these legal materials can be formulated as a systematic parsing process that is consistent with the symptoms. The analysis of legal materials is how to utilize the sources of legal materials that have been collected to be used in solving the problems in this research. Especially in analyzing the article contained in law number 40 of 2007, about the limited liability company. The basis of normative analysis use, because of the legal materials in this research, leads to theoretical studies in the form of legal principles, concepts of law, and rules of law.

The materials that have been collected are analysis of description, interpretation, evaluation and systematization. The description technique is to describe (*abstracted*) as a phenomenon or the position of the legal and non-legal proposition found, thus obtaining a clear picture of the related legal impact caused by the company that does not have obtained the legal status of the entity yet.

Interpretation or interpretation techniques use the types of interpretation in the legal sciences to the proposition that is found to be systematized in accordance with the discussion on the subject matter of this research. The evaluation technique is either precise or improper, concur or disagrees, true or false, valid or invalid, by the researcher against a view, proposition, statement of norms, whether stated in the primary or legal material of the skunders. The technique of systematization is to seek to relate to the formulation of a concept or proposition of the law between the same and the unequal laws.

The results of these four analytical techniques are then conducted analysis according to the contents, which is the analysis of the content with the effort to sort and select data from the existing library materials and in the direction of the research object in question to find, identify, process and analyse the legal material to understand its meaning, and its relevance.¹⁰ Content analysis is a research

⁹ Jhonny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang : Bayumedia Publishing, 2006, p. 296.

¹⁰ Burhan Bungin, *Metodologi Penelitian Kualitatif : Aktualisasi Metodologi Ke Arah Ragam Varian Kontemporer*, PT. Raja Grafindo Persada, Jakarta, 2007, p. 203.

technique to produce an objective, systematic and qualitative description of the substance of the research itself.

The method of analyzing the data in this study, by systematically processing the research materials to be presented comprehensively.

The method used to analyse is the deskriptif and qualitative methods. Descriptive is to analyze the data by displaying in detail and precisely regarding certain phenomena related to the writing of this law. Qualitative is to analyse the exposure of the results of the writing that has been systematized by the study of the theories of law and positive law. This is to explain the problem of legal research with a logical sentence, it is scientific and easy to understand.

Discussion

Mechanism of Ratification of PT Which Was Established Prior to the Issuance of Law No. 40 of 2007 About Limited Liability Company

The Implementation Of Legal Entity Ratification of the Limited Liability Company Using Legal Entity Administration System (*hereinafter referred to Sisminbakum/SABH*).

In substance, process and application of legal entity verification, agreement on the amendment of the Articles of association, delivery of Notice of amendment of the company, and change of data of the companys as stipulated in Permenkumham number 4/2014 is the same. The applications are filed through the administrative system of the legal entity ("SABH"). SABH is a technology service company electronically organized by the Directorate General of General Law administration.

Who can access SABH is a notary public that is based on the power of the founders to do all the management of the company that will be established by the founders. In addition to the notary and its founders, others are not allowed to process the legality of the company as a legal entity as mandated by the law. In the early stages for notary can use SABH should apply for an official application to obtain user ID and password at the Ministry of Justice and Human Rights of the Republic of Indonesia. The stages that must be done by the notary to obtain the status of legal entities are as follows:

1. Name checking and name reservation

After logging in the SABH application, the first thing to do is to check the name of the company that will be listed in the data base. Every use of the name must be approved by the Minister of Justice and Human Rights of the Republic of Indonesia. This first step is to ensure that the company name is not registered and to ensure that the name of the company to be used can be accepted by the Minister of Justice and Human Rights of the Republic of Indonesia. If the name of the company is not registered then the user is required to press the company's name reservation button to establish a limited liability company. The required data are as follows:

a. The company consists of:

- 1) Limited Liability Company of Non public Facilities;
- 2) Limited Liability Company of PMA facility;
- 3) Limited Liability Company of facilities of PMDN;
- 4) Limited Liability Company of Persero BUMN;
- 5) Limited Liability Company of banking;
- 6) Limited Liability Company of Non-Banking financial institution;
- 7) Limited Liability Company of special Business;

- b. Place of position
- c. Abbreviation of company name (*if any*).

If the data has been completed, then it is the monitoring of the name inspection process. In this process, the user is subject to payment of Rp. 200,000,- (*two hundred thousand Rupiah*). This payment is in accordance with government regulation of the Republic of Indonesia number 38 of 2009 about types and tariffs on type of state acceptance non-tax applicable to the Ministry of Law and Human Rights of the Republic of Indonesia.¹¹

By doing this process is the name of the company and the submitted data is checked in accordance with government provisions number 26 of 1998 concerning the use of the limited liability company. If the name is not approved by the DIAN corrector, the notification and rejection reason will be sent by the notarized email:

- 1) Notarized letter of removal of PT name, then the transaction is completed;
 - 2) Notary in the stage of checking the name from the beginning if the name is rejected less than 2 times or there is a similarity with the name of other PT, then the notary can send a statement of no objection to the name of the director of the company that Sony has in common with the name of the company to be registered, a letter of a group from the director of Company or the company's name improvement.
2. Pre DIA I and DIAN I Data Replenishment
- Data replenishment in PRA DIAN I is an advanced process that must be passed after the submission of the company name and before the DIAN stage I. At this stage it is required to fill in the "tick" mark on documents that must be submitted when entering the physical code.

The steps to be done to fill the data pre DIAN I choose menu Pre DIAN I then select the name of the company that will be processed in DIAN I then enter the date of the establishment deed of the company, after that in this stage the data that must be completed divided into three parts are:

- 1) Pre mandatory terms consisting of:
 - a. copy of the establishment deed;
 - b. Proof of payment of Non-Tax Country Receipts (*herinafter referred to PNBP*) fees for announcements in addition to the State Gazette of the Republic of Indonesia;
 - c. Proof of payment of PNBP fees for the use of company name;
 - d. Proof of payment of PNBP fees for endorsement;
 - e. Complete Certificate of company address.
- 2) Conditional prerequisites (*which should be selected one*), which consist of:
 - a. The proof of the deposit capital (*the statement has been deposited for DIAN I*);
 - b. In terms of the establishment of the company from CV to PT, namely: The final balance sheet of the company made by the individual firm or CV;
 - c. In the case of depositing in the form of Goods (*Inbreng*) consisting of:
 - Assessment result of the appraisal)
 - Announcements in daily newspapers.
- 3) Optional requirements, consisting of:
 - a. Copy of fusion deed, if the establishment of the company is done in the framework of fusion;
 - b. Minister Decree on the status of the company's legal entity, if one of the founders is a company
 - c. Decree of the Minister on the status of the Legal Entity Foundation, if one of the founders is a foundation
 - d. The minister Decree on the status of an association's legal entity, when one of the founders is the association;

¹¹ Regulation of the Government of the Republic of Indonesia on types and tariffs on the type of non-tax state acceptance applicable to the Ministry of Law and Human Rights of the Republic of Indonesia, Government Regulation number 38 of 2009, LN No. 77, Number 1.

After completion at the pre-DIAN stage I then perform the process of DIAN I which is the final stage process for filling the company data. If the data which has been filled according to the Directorate General of General Law administration, then only enter the physical documents or send the company's physical documents to the Ministry of Justice and Human Rights of the Republic of Indonesia and stay pending the process of classification of data that has been entered with physical documents. The company Data that must be filled into the form is divided into:

- 1) Principal Data of the company.
 - a. Company address;
 - b. Taxpayer identification number (NPWP);
 - c. Form of establishment (limited or unlimited).
- 2) Deed of the company.

Loading the company's deed data, namely:

 - a. place of position;
 - b. Date and Deed number.
- 3) Capital Stock.

Contains information about the number of shares, namely:

 - a. The company's basic capital;
 - b. Capital is placed;
 - c. Paid up capital;
 - d. Amount of paid-in capital;
 - e. The total number of shares;
 - f. Number of shares placed;
 - g. Nominal value of shares.
- 4) The company's founder.

Data about the identity and the status of the company's founder, namely:

 - a. The company's shareholders;
 - b. The Board of the company (*at least one board of directors and one Commissioner*);

DATA contains the personal identity of the full name, address, city, place and date of birth, occupation, national identity and nationality number.
- 5) Purpose and objectives.

SABH has prepared a list of the purposes and objectives of the company. In general, the intent and purpose data is distinguished by type and purpose, namely:

 - a. Purpose and objectives that are intended for the type of company Non public facilities, banking, Non-banking financial institutions and special business.
 - b. Purpose and objectives that are intended for the type of company PMA, PMDN and BUMN.

After the fifth thing is completed then the notary click the "Yes" button if it approves the filled data. After the data in DIAN finished eating SABH will perform the data storage of the DIAN into the system to be carried out data checks by the *DIAN Corrector*, *Kasie* and *Kasubdit*. If there is a correction of the three correctors and officials Manotification to the corresponding notary by email and then notary sent a data repair letter at DIAN and repair the DIAN data is done by customer support.

3. Statement of no objection or refusal of the minister

After DIAN I is filled, the Minister of Law and Human Rights of the Republic of Indonesia can assert objections or reject the proposed petition in SABH. If the data that has been entered got correction or something to be repaired can be seen details with the error through the Monitoring menu. If the data entered is received then on the monitoring page there is a date and time in the status of DIAN do not mind the minister and should be delayed by 30 days since the date and hour do not mind the minister.

In the period no later than 30 days since the statement does not mind the Minister of Justice and Human Rights of the Republic of Indonesia, the notary is obliged to submit a letter of physical application along with a description of supporting documents.

4. Delivery of physical documents

This stage is the final stage that must be fulfilled to complete the entire process of ratification of the company's legal entity since the name booking, pre DIAN I, filling DIAN I until the submission of physical documents.

5. Minister issued a certificate about the legality of the company's legal entity.

After the physical documents are examined and accepted, the notary will receive a notice that awaiting the decree of the Minister on the ratification of the company's legal entity at least 7 days but in practice the Decree (*herinafter referred to SK*) the minister is always more than 7 days.

In the waiting stage of SK the Minister is notary can see on the monitoring of the completion stage already until where. In the process of issuance of SK can be clay in the monitoring, that are, the numbering of SK, ratification of SK by *Dirjen*, printing decision SK and the delivery of SK.

Application for verification of legal entity PT Non electronically

In the case of approval of a legal entity, the application for amendment of the Articles of association, or application for amendment of the company's data cannot be submitted electronically by reason (i) where the notary public has not been available yet; or (ii) the SABH does not function as expected based on the official announcement by Ministry of Justice and Human Rights, the applicant can apply manually. The application manually is done by submitting the application in writing by attaching supporting documents. In addition, the manual application also needs to be provided with a certificate from the head of the local telecommunications office stating that the position of the notary has not affordable internet facilities.

With the effect of Ministry of Justice and Human Rights No. 4/2014 then Ministry of Justice and Human Rights No. 01/2011 repealed and declared void.¹²

The Legal Consequences of a Limited Liability Company That Has Not Obtained the Status of the Legal Entity Under Law Number 40 of 2007 About Limited Liability Company

Changes in the law of limited liability company bring the consequences that the business actors must adjust the articles of association with the Company Law (*herinafter referred to UUPT*), in addition all organs of the company must also follow the provisions in UUPT. Objectives issued Law No. 40 of 2007 about the limited liability company, in order to fulfill the development of the law and the needs of the community because of the economic condition and advancement of science, technology, and information has been developed so rapidly especially in the era of globalization.

According to Article 157 paragraph (4), the company that does not adjust its basic budget within the specified period, i.e. until 16 August 2008, the tomb of the company can be dissolved based on the decision of the District Court in the application of prosecutors or stakeholders. But in the UUPT is not determined, that the adjusted basic budget should not adjust the underlying budget again after the transition. For this reason the notary of Indonesia is striving for the revocation of integrity facts. And until now, all the articles of Association of the company which late can be adjusted accordingly.

The amendment of the limited liability company, gives the burden to the entrepreneur in Indonesia because it is mandatory to adjust the basic budget of the of in the deadline of 1 (*one*) years since the enactment of UUPT. But in the implementation there are still many company that has not adjusted its basic budget. Adjustment of the company's Articles of association after the deadline specified

¹² [Http://www.daftarbisnis.PengesahanBadanHukum-PeraturanPerseroanTerbatas](http://www.daftarbisnis.PengesahanBadanHukum-PeraturanPerseroanTerbatas), on 29 February 2020.

in article 157 paragraph (3) UUPT is apparently able to run fluently without barriers to obtain approval from the Minister of Justice and Human rights. In Article 157 paragraph (4) expressly stated, that the company that has not adjusted its articles of association in a period of 1 year, can be dissolved based on the decision of the state court in the application of prosecutors or parties concerned.

Law No. 1 of 1995 gives a 1-year grace period so the company has sufficient time to hold the General Meeting of Shareholders (*herinafter referred to RUPS*) and conduct the entire set of adjustment process until obtaining approval from the minister. For the company that has made adjustments to the basic budget, the company can run as usual.¹³

This is strengthened by Hiasinta Yanti Susanti Tan¹⁴ opinion of limited liability company that has not adjusted its basic budget with UUPT until the 16th of August 2008, so the limited liability company is still exist as a legal entity and does not scatter itself, and not lose its status as a legal entity. Article 157 paragraph (4) UUPT said the company that does not adjust its basic budget within the period as referred in paragraph (3) can be dissolved based on the decision of the District Court in the application of prosecutors or parties concerned. By a contrario, it is interpreted that as long as it has not been dissolved under the verdict of the district Court, the company remains recognized as a legal entity.

Responsibility of the Board of Directors of PT Yang Establishment Has Not Been Adjusted by Law Number 40 of 2007 About Limited Liability Company

The company in carrying out its activities is governed by one/more directors appointed by the RUPS. Based on UUPT the board of Directors conducts the company for the benefit of the company and in accordance with the purpose and objectives of the company. In addition, the Board of Directors serves as a representative of the company in conducting actions on behalf of the company both in an internal and external way to third parties, including the custody of the company in court.

The Board of Directors cannot take any action for the benefit of the company as specified in its fundamental budget. For example, a company that is in the basic budget is determined to perform a working activities, but the directive conducts import activities. Although the activities undertaken by the Board of Director are very beneficial to the company, but the board of Directors considered violating statutory provisions.¹⁵

In article 97 paragraph (2) of Limited Liability Company Law shall impose obligations on the Board of Directors to perform such management actions in good faith and full responsibility. Good faith in this case has an objective meaning that means that the achievement of the Board of directors and the way the Board of Directors performs its duties and authorities in taking care of the company should always heed the norms of law, decency and decency. As such, the goodwill of Directors contains an obligation for the board of Directors to always prioritize the interests of the company solely, as well as not utilize its strategic position to benefit, either directly or indirectly, from the company in an unfair, and avoid conflict of interest between the personal interests of directors with the interests of the company.¹⁶

¹³ Nusiba Al-Hima, Wenny Setiawati, *Penyesuaian Anggaran Dasar PT. Sumber Niaga Yang Didirikan Pada tahun 1983*, Skripsi Program Studi Ilmu Hukum, Universitas Indonesia, 2014.

¹⁴ Hiasinta Yanti Susanti Tan, *Konsekwensi Perubahan Undang-Undang Perseroan Terbatas Terhadap Eksistensi Perseroan Terbatas*, Tesis Magister Ilmu Hukum, Universitas Diponegoro.

¹⁵ Frans Satrio Wicaksono, *Tanggungjawab Pemegang Saham, Direksi dan Komisaris Perseroan Terbatas*, Jakarta, Visimedia, 2009, p. 128.

¹⁶ Gunawan Widjaya, *Risiko Hukum Sebagai Direksi, Komisaris Dan Pemilik PT*, Jakarta, Forum Sahabat, 2008, hlm. 74.

Rudy Prasetya¹⁷ distinguishes between Director and Directors. The word "directors" refers to its institution, while the word "director" is used to designate the person. A company can have a director more than one adapted to the business activities owned by the company.

In relation to its legal responsibility, many argue that the company has not/does not adjust its basic budget, its legal responsibility is on the company's organs in a range of the responsibility.

In this case it is likened to a limited liability company that has not acquired the status of a legal entity, or a new one standing. So that all shareholders, managers, or founders are responsible for the range of legal action. But this opinion is much denied by the notary, and as it was discovered above, article 157 paragraph (4) UUPT says the company that does not adjust its basic budget within the period as referred to in paragraph (3) can be dissolved under the verdict of the district court in the application of prosecutors or interested parties.

Based on the above studies, a board of directors who does not report a change of the Articles of Association of A Company through SABH resulted in The company is not registered in SABH so as to fail to conform with Law No. 40 of 2007 (UUPT) is a board of directors who do not comply with the legislation so that it can be qualified not in good faith and nenglig the responsibility of a board of directors as mentioned above is responsible personally for the loss of the company if he/she is guilty or negligent to carry out its duties. The resulting result is that PT is deemed not to be registered with the authorized institution and, if it has passed time, the amendment of the Constitution does not have the approval of the amendment and the Minister or appointed official.¹⁸

In this case the company's officers become responsible for the company's distribution. The Board of Directors of the company is considered responsible for its negligence does not make adjustments to the articles of association under PT 1995 and No. 26 of 1998 concerning use of limited liability company, because the task of management of the company is in the hands of directors The Board of Directors becomes solely responsible personally if adjustments are not made due to the negligence of the board of directors in carrying out their duties and responsibilities.¹⁹ So that the legal responsibility of the Parties relating to Limited Liability Company is the responsibility of the Board of Directors in a limited range including the unlimited liability

Conclusion

Mechanism of ratification of legal entity PT established prior to the issuance of Law No. 40 of 2007 concerning limited liability company, as follows:

- a. Name checking and reservation name
After logging in the application of the Legal Entity Administration System (SABH), the first thing to do is to check the name of the company that will be registered in the data base.
- b. Pre-Data Filling of notary Deed (Pra DIAN 1 and DIAN 1)
The data replenishment at PRA DIAN I is an advanced process that must be passed after the submission of the company name and before the DIAN I stage.
- c. Statement of no objection or refusal of the minister

¹⁷ Rudy Prasetya, *Perseroan Terbatas Teori & Praktik*, Sinar Grafika Jakarta, p. 23.

¹⁸ Article 8 paragraph (7) of regulation of the Minister of Law and Human Rights of the Republic of Indonesia number M. HH-01. AH. 01.01 of 2011 on how to apply for the approval of legal entity and the Agreement on amendment of the Constitution and the notification of amendment of the company's Data.

¹⁹ Freddy Haris dan Teddy Anggoro, *Hukum Perseroan Terbatas : Kewajiban Pemberitahuan Direksi*, Bogor: Ghalia Indonesia, 2010, p. 3.

After the notary deed form (FIAN) I is filled, the Minister of Law and Human Rights of the Republic of Indonesia may assert objections or reject the proposed application in the administrative system of the legal entity (SABH).

d. Delivery of physical documents

This stage is the final stage that must be fulfilled to complete the entire process of ratification of the company's legal entity since the name booking, pre DIAN I, filling DIAN I until the submission of physical documents.

e. Minister issued a certificate about the legality of the company's legal entity.

Once the physical documents are checked and received, the notary will receive a notice that awaiting the SK process of the minister on the legality of the company's legal entity at least 7 days but in practice the SK the minister is always more than 7 days

The legal effect of a limited liability company that has not obtained the Status of the legal entity under Law No. 40 of 2007.

Limited liability company that has not adjusted its basic budget with UUPT until August 16, 2008, then the limited liability company is still exist as a legal entity and does not scatter itself, and does not lose its status as a legal entity. Article 157 paragraph (4) UUPT says the company that does not adjust its basic budget within the period as referred in paragraph (3) can be dissolved based on the decision of the District Court in the application of prosecutors or parties concerned. By a contrario, it is interpreted that as long as it has not been dissolved under the verdict of the district Court, the company remains recognized as a legal entity.

Responsibility of the Board of Directors of PT Yang establishment has not been adjusted by law number 40 of 2007 about the limited liability company.

According to Article 157 paragraph (4), the company that does not adjust its basic budget within the specified period, i.e. until 16 August 2008, then the company can be dissolved based on the decision of the District Court on the petition or the parties concerned. However in the UUPT is not specified, that the articles of association that are late adjusted shall not adjust the underlying budget again after the transitional period and for the limited liability company which has a wealth/asset in the form of land (non-moving goods) must remain in accordance with the amendment of the Articles of association in relation to the change of Law limited liability company, so that the company is still recognized its existence (existence), even one of the organs of PT that is the board of Directors who do not report the amendment of the Articles of Association of PT A through the system of administration of the legal entity (SABH) that resulted in the PT is not registered in the SABH so as to fail to be 2007 40 adjusted to the Law No. The responsibility of a board of directors as mentioned above is responsible personally for the loss of the company if he/she is guilty or negligent to carry out its duties.

Suggestion

Need socialization to the community and especially on the parties who are doing business about the issuance or the enacted Law No. 40 of 2007 about the limited liability company, so that all businesses or entrepreneurs know it, so that there is no reason entrepreneurs to say do not know it. Likewise, the transitional terms affirmed in Article 157 paragraph (3) UUPT in order not to be enforced in a rigid way, because in UUPT it is not regulated that after the passage of that period, limited liability company is not allowed to adjust its basic budget.

3

Because the development of legal politics in the field of limited liability is very fast to support the fast service in the business world, to support the development of national economy organized by economic democracy with the principle of togetherness, fairness, sustainable efficiency, environmental insight, independence, and maintain a balance of progress and national economic Unity aims to realize the welfare of society, then the implementation of Law No. 40 of 2007 is sought to be applied properly and is not often changed.

The need for advance research by legal experts prior to the amendment of a law, so that the law can be accepted by the wider community within a continuous period of time.

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