



Legal effects on shareholders who do not make capital deposits in limited liability companies (Case Study of Case Decision Number 191/Pdt.G.2020/PN.Bgr.)

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ABSTRACT

This research examines the provisions regarding capital payment, the legal status of shareholders who fail to fulfill their capital payment obligations in a limited liability company, and analyzes the judge's considerations in stating that Edy Susanto is not entitled to be recognized as a shareholder because he has never made actual capital payment into the company. The results of this research indicate that according to the Company Law, capital payment provisions must be fulfilled in full and cannot be paid in installments after the Limited Liability Company is legally established. Shareholders who have never made capital payment after the establishment of the Limited Liability Company cannot be recognized as legitimate shareholders, and the judge's consideration in stating that Edy Susanto cannot be recognized as a shareholder of PT Berdikari Sukses Makmur is an appropriate consideration. To prevent such issues from occurring in the future, the government should improve the provisions in the Company Law by stating that if there is a violation of capital payment, the directors responsible for the violation of capital payment provisions should be held accountable, and the company should have the authority to demand such obligations through negotiation or legal action.

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1. INTRODUCTION

The regulation of legal provisions regarding Limited Liability Companies in Indonesia was first regulated through the Wetboek van Koophandel Staatsblad 1847-23 which was then further regulated through related legal provisions into the Commercial Code. (Ridwan Khairandy, 2014) In the 1990s, provisions related to Limited Liability Companies were further regulated through Law Number 1 of 1995 concerning Limited Liability Companies, which was then updated again through Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as "UUPT"). Based on the provisions of Article 1 paragraph 1 of the UUPT, it is known that the definition of a Limited Liability Company is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with an authorized capital which is entirely divided into shares and fulfills the requirements set forth in the Limited Liability Company Law and its implementing regulations. (Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, L.N. Tahun 2007 Nomor 106, TLN 4756, Ps. 1 Ayat (1), n.d.) In its development, Limited Liability Company law experts provide an understanding that a limited liability company is an independent

legal entity with the status of a legal entity, (Rudhi Prasetya, 2011) which has rights and obligations that are basically no different from the rights and obligations of human legal subjects. (Frans Satrio Wicaksono, 2009) With the recognition of the legal status of Limited Liability Companies as legal entities by the Company Law, it is reaffirmed that legally there are other legal subjects besides humans (natuurlijkpersoon). (Gary A. Moore, n.d.) Therefore, it gives birth to a juridical and logical consequence that the existence of a Limited Liability Company as a legal entity also gives birth to protection of the personal assets of the Limited Liability Company in the form of capital and the shareholders of the Limited Liability Company are not personally liable for agreements made on behalf of the Limited Liability Company and are not liable for the losses of the Limited Liability Company exceeding the shares owned. (Sandra Dewi, 2020).

The company's presence plays a significant role in contributing to the country's economic movement. (Sjawie, 2017) In order for the company to be able to interact to carry out business interactions and legal relationships such as implementing agreements and certain business activities, capital is needed, which comes from the wealth of shareholders that are separate and independent from the wealth of shareholders personally. (Ahmad Mufti, 2019) A Limited Liability Company is more accurately said to be a capital partnership because a Limited Liability Company is a partnership that prioritizes the accumulation of as much capital as possible through the sale of shares and does not prioritize the quality of the allies of the partnership, (M. Yahya Harahap, n.d.) In addition, a Limited Liability Company is more accurately referred to as a partnership or association of capital because there is no close cooperation between the members of the partnership and perhaps even between fellow members of the partnership in a Limited Liability Company do not know each other and the company's business actions in the form of interactions and agreements are solely carried out for the sake of profit. (Ahmad Mufti, 2019).

The provisions of Article 33 of the Company Law require that all forms of capital deposit be made in full, both for shares subscribed for before the Limited Liability Company becomes a legal entity, as well as shares issued after the company is established (portfolio shares), (*Undang-Undang Tentang Perseroan Terbatas. Ps. 33 Ayat 1*, n.d.) so that if a shareholder has committed himself to take a certain amount of share value, the shareholder is obliged to deposit the full value of the shares that have been promised in real terms into the company's account and it is absolutely not allowed to deposit the capital in installments. (*Undang-Undang Perseroan Terbatas, Ps. 33 Ayat (3)*, n.d.) This obligation to pay up the capital in full is different from the provisions for capital deposits as stipulated in Law No. 1 of 1995 on Limited Liability Companies which allows capital deposits or payments for shares subscribed for to be made in installments, provided that the remaining deposit obligations must be paid up immediately after the Limited Liability Company is ratified as a legal entity. (*Undang-Undang Tentang Perseroan Terbatas, Ps. 26*, n.d)

One example of a case that raises the issue of share ownership due to the failure to deposit capital is the case of a share ownership dispute between PT Berdikari Sukses Makmur as the Plaintiff against Edy Susanto as the Defendant. (*Putusan Pengadilan Negeri Bogor Nomor 191/Pdt.G.2020/PN Tanggal 5 Mei 2021*, n.d.) Based on the Decision, it is known that at the time of the establishment of the company, Edy Susanto as the Defendant had bound himself to take 600 shares in the Plaintiff Company with a capital deposit of Rp 60,000,000.00 (sixty million rupiah). However, in reality, Edy Susanto never carried out his obligation to deposit capital as agreed, so the panel of judges examining and adjudicating the case decided that Edy Susanto had committed a default and Edy Susanto could not be recognized as a shareholder because he never actually deposited capital into the company.

The interesting thing that can be studied from the decision is how the provisions regarding capital deposit and the legal consequences that occur if the shareholder never makes a deposit into the company. This problem is the background for the author to compile research with the title "Legal Consequences for Shareholders who do not make Capital Deposits in Limited Liability Companies (Case Study of Decision Number 191/Pdt.G.2020/PN.Bgr)".

2. RESEARCH METHOD

The research method used is a research method commonly used in legal science development activities, namely normative juridical research. (Sulistiyowati & Sidharta, 2017) Normative juridical

research is research conducted by examining library materials or also known as library research, (Sri Mamudji, 2005a) which includes norms contained in laws and regulations, international conventions, treaties, court decisions and norms that live in society. (William J. Filstead, 1978) This normative juridical research is supported by secondary data consisting of primary legal materials and secondary legal materials. (Sri Mamudji, 2005b) The primary legal materials used in this research are written legal norms, namely the UUPT which regulates capital and shares as well as the deposit provisions, especially in article 33 of the UUPT. In addition to the provisions in the UUPT, another primary material is the Decision of the Supreme Court of the Republic of Indonesia Number 191/Pdt.G.2020/PN.Bgr. which the author uses as an object of analysis regarding the application of the capital deposit provisions regulated by the UUPT. In addition to the primary data above, this research is supported by secondary data in the form of a book by Yahya Harahap entitled "Limited Liability Company Law". This book is used as secondary material in the research because it discusses in depth the capital and shares in a Limited Liability Company, complete with the deposit provisions. In addition to the book, this research is also supported by other secondary materials, namely a book by Ahmad Yani and Gunawan Wijaya entitled "Limited Liability Company Business Law Series" which discusses the capital deposit provisions applicable in Indonesia in depth and easy to understand. Another book used as secondary material to support this research is a book by Rahmadi Usman entitled "Legal Dimensions of Limited Liability Companies" which in one of its chapters discusses in full the rights to shares complete with related provisions reviewed from three laws, namely the Commercial Code, Law Number 1 of 1995 concerning the previous Limited Liability Company, and the current UUPT.

3. RESULTS AND DISCUSSIONS

Provisions related to the Deposit of Capital of Limited Liability Companies

As explained in the background section above, a limited liability company as a legal subject established for the purpose of carrying out business activities absolutely requires capital in order to carry out legal interactions with other legal subjects, especially in terms of business relations and implementing agreements with third parties. Limited liability company capital (*maatschappelijk kapitaal or gemeenschappelijk kapitaal*) or in English called "authorized capital" is the entire nominal value of the shares in a Limited Liability Company. (Ridwan Khairandy, 2013) Meanwhile, the company's capital in the opinion of Sri Redjeki Hartono is the amount stated in the deed of establishment and is a maximum amount up to which shares can be issued, so that it is the maximum amount contained in all joint participants. (Sri Redjeki Hartono, 1985)

The Company Law requires the capital to be paid in full for both shares subscribed for before the Limited Liability Company is authorized, as well as shares issued thereafter in the context of capital increase. (Handri Raharjo, 2013) and must be proven by valid proof of deposit, (Undang-Undang Tentang Perseroan Terbatas, Ps. 33 Ayat 2, n.d.) so that if a person commits to take a share of the value of the shares, the amount of shares deposited must be fully paid and it is not possible to deposit capital in installments. (Gatot Supramono, 1996) Thus it can be concluded that any capital deposit, whether it is before the Limited Liability Company is established, in the context of a capital increase or against portfolio or unissued shares, must be paid in full and is not allowed to be paid in installments. (Gatot Supramono, 1996).

Legal Consequences of Lack of Capital Deposit or Capital not deposited in Full by Shareholders

The deposit of capital at the time of establishment and the commitment to take shares after the company gets the status of a legal entity is an investment or participation of a person to take part in a legal entity which is realized through share ownership. (Ida Bagus Putra Pratama & Made Dedy Priyanto, n.d.) So it can be concluded that if someone wants to become an ally or part of a Limited Liability Company legal entity, then he is required to place and deposit the nominal amount of one or more shares. This obligation to deposit capital arises because a Limited Liability Company is a business entity in the form of a legal entity which is a capital partnership consisting of shares, so that all shares placed should be paid up so that in carrying out its business it is able to function healthily, efficiently, and successfully. (Undang-Undang Tentang Perseroan Terbatas, *Penjelasan Umum*, n.d.)

Deposits of share capital of a Limited Liability Company may be made in the form of money and/or in other forms. In the event that the deposit of share capital of a Limited Liability Company is made in other forms, the valuation of such share capital shall be determined based on fair value determined in accordance with market prices or determined by an expert who is not affiliated with the Limited Liability Company. (Andrew Shandy Utama & Dewi Sartika, 2017)

Based on the provisions of the Company Law as explained in the previous sub-section, it is known that the deposit of capital of a Limited Liability Company must be made in full and installments are not possible. Philosophically, the obligation to deposit the full amount of capital that has been agreed to be part of the issued capital of a Limited Liability Company arises because as an independent legal entity, with independent rights and obligations, independent of the rights and obligations of its shareholders and management, a Limited Liability Company should have its own assets in carrying out its business activities and to carry out its rights and obligations. (Ahmad Yani & Gunawan Widjaja, 2012b)

It turns out that in practice, the process of implementing capital injection is not regulated in detail from a juridical perspective, so that it is possible that a Limited Liability Company is actually established without any capital injection, the capital injection is made in installments or the shareholders only deposit part of their obligation to deposit the number of shares, so that the implementation of the capital injection is not in accordance with the statutory provisions. In addition to problems related to the absence of detailed controls and regulations related to the implementation of capital deposits in practice, theoretically, it turns out that the juridical concepts regarding the procedure for depositing shares have not been sufficiently developed, so that the juridical and theoretical concepts regarding supervision of the implementation of capital deposits are still a "dimly lit" subject matter". (Munir Fuady, 2018) In the Netherlands, sanctions for violations of the capital deposit provisions result in the inapplicability of the limitation of liability in the company, in other words, if the amount of the capital deposit does not correspond to the number of shares taken, the board of directors must be personally liable for losses incurred as a result of the deposit that does not correspond to the nominal price of the shares taken by the shareholder. (Steven R. Schult, 1983) Meanwhile, the supervision of capital deposit in the United States is slightly more lenient by stipulating that the capital deposit must be made in full and if it is not made in full, it will create a debt and receivable relationship which can be collected at any time by the Limited Liability Company either by deliberation or through the court) and the dividend rights arising from the non-full capital deposit are only equal to the percentage of the capital deposited.

(This article was referred by Article 163 of the Delaware General Corporation Law: Title 8, Chapter 1, Subchapter V: Fully Paid Shares. The provisions of which read as follows: The share capital of a corporation shall be paid up in such amounts and at such times as the directors may determine. The directors may, from time to time, demand the payment, in respect of any shares not fully paid, of such sum of money as in the judgment of the board of directors, is necessary for the needs of the business, not exceeding in the aggregate the balance remaining unpaid on such shares, and the amount so demanded shall be paid to the corporation at such times and in such installments as the directors shall determine. The directors shall give written notice of the time and place of such payment, which notice shall be mailed at least 30 days before the time of such payment, to each holder or subscriber for the unpaid shares in full at the last post office address of such holder or subscriber

Then.....

Section 156 Delaware General Corporate Law : Title 8, Chapter 1, Subchapter V: Fully Paid Shares. The provisions of which read as follows: Any corporation may issue the whole or any part of its stock as partially paid stock and subject to demand to pay the remainder of the consideration payable therefor. On the front or back of every share certificate issued to represent such partly paid shares, or on the books and records of the company in the case of uncertificated partly paid shares, the total amount of consideration payable therefor and the amount paid therefor shall be stated. After the declaration of dividends on fully paid shares, the company shall declare dividends on partly paid shares of the same class, but only on the basis of a percentage of the consideration actually paid.)

In Indonesia, Limited Liability Company experts have never given an opinion on the sanctions that should be given to shareholders who violate the full capital deposit, they only state that in the event of non-payment of capital or non-payment of the entire number of shares until the specified time, the Limited Liability Company can take the following measures (Ahmad Yani & Gunawan Widjaja, 2012a): 1)File a civil lawsuit against shareholders who do not make deposits in the form of a debt lawsuit. 2)Expressly declare a reduction in the capital of the Limited Liability Company due to the cancellation of the incoming capital due to non-payment of the number of shares promised to be taken by the shareholder. 3)Live the right to other shareholders or approved third parties to directly take over, by fully and simultaneously depositing, all shares that have not been paid up by the old shareholders.

Until now there is no provision of legislation that regulates the legal consequences that occur if a shareholder does not pay off the obligation to deposit capital in full or does not pay off the shares that have been agreed to be taken, but in legal theory experts and scholars are of the opinion that the negligence of a shareholder to deposit capital or shares in full results in a debt and credit relationship between the shareholder and the Limited Liability Company and gives the Limited Liability Company the right to cancel share ownership. (Ahmad yani & Gunawan Widjaja, 2012)

Analysis of Capital Deposit Shortage Issues in the Decision of the Supreme Court of the Republic of Indonesia Number: 498 K/Pdt/2013

That based on the Case Study of Decision Number 191/Pdt.G.2020/PN.Bgr, it is known that the problem of share ownership due to non-performance of capital deposit obligations between PT Berdikari Sukses Makmur as the Plaintiff against Edy Susanto as the Defendant began at the time of the establishment of the company PT Berdikari Sukses Makmur, Edy Susanto as the Defendant had committed himself to take shares of 600 shares worth Rp 60,000,000.00 (sixty million rupiah). But in reality, Edy Susanto never carried out the obligation to deposit the capital while in the Deed of Establishment of PT Berdikari Sukses Makmur Edy Susanto's name was recorded as a shareholder of 600 shares. For this problem, PT Berdikari Sukses Makmur as the company has filed a lawsuit at the Bogor District Court on November 27, 2020 in order to obtain legal certainty regarding Edy Susanto's share ownership. The panel of judges who examined and tried the case finally determined that Edy Susanto could not be recognized as a shareholder of PT Berdikari Sukses Makmur because he had never actually implemented the company.

To find out whether the judge's decision is correct according to the capital deposit provisions stipulated in the Company Law and related provisions, the first thing that must be described in this analysis is how the capital deposit obligation and capital deposit provisions applicable in Indonesia based on the provisions of the Company Law and related legal expert opinions.

The deposit of capital referred to above is an absolute obligation that must be fulfilled both in respect of capital subscribed prior to the establishment of the Limited Liability Company and after the Limited Liability Company has been ratified as a legal entity. (Ahmad yani & Gunawan Widjaja, 2012b) Regarding the obligation to deposit capital as referred to above, the Company Law requires that the capital deposit be made in full and it is not possible to deposit capital in installments (Indonesia, n.d.) This requirement for full payment of capital must be made both for shares subscribed for before the Limited Liability Company is authorized, as well as for shares issued thereafter in the context of capital increase, (Dewi Oktavia & Irene Svinarky, 2021) herefore, it can be concluded that every capital deposit, whether it is before the Limited Liability Company is established, in the context of capital increase or for portfolio shares or those that have not been issued, must be paid in full. (Dewi Oktavia & Irene Svinarky, 2021) The legal consequences for the failure to deposit capital at the specified time is to create a debt-debt relationship between the Limited Liability Company and the shareholders and if the deposit is still not made after billing, the company through the GMS has the right to declare the cancellation of share ownership and the Limited Liability Company has the right to transfer the unpaid shares to other parties.

Based on the facts that occurred in the above case, in relation to the provisions of the Company Law and expert opinion regarding the deposit of capital in a Limited Liability Company as

stated above, it can be concluded that Edy Susanto cannot be recognized as a shareholder of PT Berdikari Sukses Makmur because he never actually deposited his obligations as a shareholder in the amount of Rp 60,000,000.00 (sixty million rupiah) into the company's treasury and such actions are not in accordance with and violate the provisions of the capital deposit stipulated in the Company Law which requires that all capital deposits both at the time of establishment and at the time of issuance of new shares or capital increase must be made in full.

The provisions can be concluded that the judge's decision stating that Edy Susanto cannot be recognized as a legitimate shareholder of PT Berdikari Sukses Makmur because he never actually deposited the capital deposit obligations agreed in the Deed of Establishment of PT Berdikarei Sukses Makmur is a legal consideration and the judge's decision is correct.

This is because the absence of depositing capital as carried out by Edy Susanto as the Defendant in the aquo case is an action that is not in accordance with the applicable laws and regulations in Indonesia. The implementation of the capital deposit which is contrary to the provisions of the capital deposit stipulated in the Company Law resulted in Edy Susanto as the Defendant legally cannot be said to be a shareholder as agreed at the time of the establishment of PT Berdikari Sukses Makmur.

4. CONCLUSION

Based on the whole description above, the following conclusions can be drawn: According to the Company Law, the provision of capital deposit after a Limited Liability Company has been ratified as a legal entity must be made in full and it is not possible to do it in installments, because based on the provisions of Article 33 paragraph 1 and paragraph 3 of the Company Law, it is known that capital deposits, both in the context of capital increase and against portfolio shares or those that have not been issued, must be paid in full and are not allowed to be made in installments. The absence or shortage of capital deposit from shareholders will result in the company through the board of directors being obliged to collect the share deposit obligation from the shareholders concerned and if necessary, the company is allowed to file a civil lawsuit to cancel the share ownership of the shareholders. The judge's decision stating that he cannot be recognized as a legitimate shareholder of PT Berdikari Sukses Makmur is an appropriate consideration and decision of the judge, because the provisions of the Company Law and expert opinions as described in the first and second conclusions above, it can be concluded that the deposit of capital must be made in full, so Edy Susanto, who never deposited capital in accordance with the value agreed in the deed of establishment of the company, is not entitled to the value of shares that he never deposited.

Based on the conclusions described above, the suggestion that can be conveyed to the subject matter examined in this study is that the Government should improve the provisions of the UUPT by clearly stating how the legal consequences of the status of ownership of shares whose capital has never been deposited in real terms. For example, the legal provisions in the Netherlands expressly state that if the capital deposit provisions are violated, the board of directors will be personally responsible for potential losses incurred due to the absence of capital deposit and the legal provisions applicable in the United States which authorize the company to take deliberative or legal channels to carry out the collection of these obligations.

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