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LEGAL PROTECTION OF SHAREHOLDER'S RIGHT IN OF DISSOLUTION COMPANY BASED ON LAW NUMBER 40 OF 2007 REGARDING LIMITED COMPANIES (CASE STUDY OF THE SUPREME COURT'S DECISION NUMBER 1618 K/PDT/2016)

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Abstract

The dissolution of a limited liability company is regulated in Article 142-146 of Law Number 40 of 2007 concerning Limited Liability Companies. In the case of the Supreme Court Decision Number 1618 K/Pdt/2016 where one of the requirements for the application for the dissolution of a Limited Liability Company is to notify the tax agency that the company has been inactive for 3 (three) years or more which must be carried out by the Board of Directors. Whereas in the case of the dissolution of the company through a court order in article 146 paragraph 1 letter c it states that the district court may dissolve the company at the request of the shareholders, the Board of Directors or the Board of Commissioners based on the reasons that the company is not possible to continue.

Introduction

Generally a company will always strive to achieve its objectives, both long-term goal for example is able to increase the value of the company and the welfare of shareholders, as well as short-term goal for example maximizing profit company with the resources of them.[1]

The limited liability company is a form of partnership with legal status, in which there is a pool of capital/shares, has assets that are separate from the assets of the company, shareholders have limited responsibility, there is a separation of functions between shareholders and management or directors, has commissioners as supervisors, and the highest

[1] I Nyoman Agus Suwardika. Dan Ketut Mustanda. Pengaruh Leverage, "Ukuran Perusahaan, Pertumbuhan Perusahaan, Dan Profitabilitas Terhadap Nilai Perusahaan Pada Perusahaan Property", *Jurnal Manajemen Unud, Fakultas Ekonomi Dan Bisnis Universitas Udayana* 6, no. 3, (2017): 1249.

power is at the General Meeting of Shareholders (GMS). A limited liability company is an "*Artificial Person*", namely a legal entity that is intentionally created .[2]

Legal relations reflect the interests of the parties who have legal relations, there is a legal presence that will function to integrate and coordinate these interests so that they do not conflict with each other (conflict of interest).[3] In carrying out its governance, ideally the company does not just comply with the specified rules and does not just meet the minimum standards, but the company must be able to generate company value.[4]

PT Baraventura Pratama (BVP) in this case is a shareholder. Stakeholders in the matter. PT BVP who are shareholders of fifty percent (50%) in PT Money Commodities & Energy Services (AKES). Previously PT BVP filed an application for the dissolution of PT AKES in the Central Jakarta District Court in case number 176/Pdt.P/2015/PN.Jkt.Pst, and the application was rejected by the Central Jakarta District Court.

In considering the decision, the panel of judges of the Central Jakarta District Court stated the application for the dissolution of PT AKES submitted by PT BVP as a shareholder cannot be accepted because it is submitted on the basis of evidence in the form of a letter of notification about the inactivity of the company submitted to the tax office where the letter is made by the shareholder. The panel of judges assesses the submission of a letter of notification of the inactivity of a company for 3 (three) years or more is the authority of the directors and not the shareholders.

The determination of Central Jakarta District Court was then confirmed by Supreme Court Decision (MA) Number 1618 K/Pdt/2016, which stated: or more should be done by the Board of Directors. Because according to directors is the organ of the company authorized and fully responsible for the management of the company for the benefit of the company, in accordance with the purposes and objectives of the company and represent the company, both in and out of court.

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[2]Kamsil, *Seluk Beluk Perseroan Terbatas Menurut Undang-Undang No 40 Tahun 2007*. (Jakarta: Rineka Cipta, 2009), 13.

[3]Trusto Subekti, batasan tanggung jawab direksi atas kerugian perusahaan, *Jurnal Dinamika Hukum, Fakultas Hukum Universitas Jenderal Soedirman* 8, no. 1.(2008): 21.

[4]Bambang Purnomo dan Hediono Insiwijati Prasetyaningsih, "Pengaruh Implementasi Good Corporate Governance Terhadap Kinerja Keuangan Perusahaan", *Jurnal Fakultas Bisnis, Universitas Kristen Duta Wacana*, 14, no. 1, (2019): 47.

But in the case of dissolution of the company through a court decision in article 146, paragraph 1, letter c mention that the district court may dissolve the Company at the request of shareholders, the Board of Directors based on the reason the company is unlikely to continue.

PT BVP argued explanation of Article 146 paragraph (1) c should not be translated into a new norm which is different from the original sound of the article. The explanation of the letter a must mean that the shareholders, the Board of Directors or the Board of Commissioners, may submit a letter of notification of an inactive company to the tax agency. If it is interpreted that only the Board of Directors has the right to make notification to the tax agency regarding a non-active company, this is a new norm which is contrary to the sound of the article. Thus, the Central Jakarta District Court's consideration, which was strengthened by the Supreme Court which stated that the act of notifying the tax agency regarding an inactive company was only entitled to be carried out by the Board of Directors, considered PT BVP is a translation of the explanation of an article that creates a new norm that is contrary to the norm in the article.

The existence of the potential that limits only granting the said right to one party may be experienced by another person or party, who also has a position as a shareholder, in a limited liability company. Due to legal uncertainty and conflict with the contents of Article 146 paragraph (1) letter c of the Limited Liability Company Law, the explanation of Article 146 paragraph (1) letter c in point a of the Limited Liability Company Law may harm certain parties. Raised a thesis entitled **Legal Protection of Shareholders Rights in the Dissolution of a Company Based on Law Number 40 of 2007 concerning Limited Liability Companies (Case Study of Supreme Court Decision Number 1618 K/PDT/2016).**

Legal Certainty to Shareholders, Due to the Lack of Clarity on Who Has the Right to Apply for Dissolution of a Limited Liability Company (Case Study of Supreme Court Decision Number 1618 K/Pdt/2016)

In this case, PT Baraventura Pratama (“PT BVP”) is domiciled in South Jakarta, having its address at Office 8, 21st Floor, Units E and F, Sudirman Central Business District Lot 28, Jenderal Sudirman street Kavling 52-53, Jakarta, represented by Erwin Sutanto as Director. In this case against PT Artha Komoditi & Energy Services (PT Akes“), PT Republik

Energi & Metal, (one of the Shareholders of 25,000 shares with a nominal value of Rp25,000,000,000.00 [50%] in PT AKES), domiciled at Budi Kemuliaan I Street Number 2, Gambir, Central Jakarta, represented by Vera Likin , as Director.

In the expert witness presentation contained in the decision of Prof. Dr. Nindyo Pramono, SH, MS, is of the opinion: Shareholders have the right to seek legal evidence in such a way as to prove the existence of a legal fact that the company has not conducted an active business for 3 years or more, among others by not registering the Deed of Establishment of the Company in the Company Register according to the Law. Number 3 of 1982 (UUWDP), does not have a TIN and so on; Notification to the Tax Agency does not have to be made by the Board of Directors or the Board of Commissioners, but also by the shareholders themselves based on Article 146 paragraph (1) letter (c) of the Limited Liability Company Law; Article 146 paragraph (1) letter (c) of the Limited Liability Company Law provides an opportunity for shareholders, as well as for the Board of Directors and the Board of Commissioners to apply to the District Court for a decision to dissolve a Limited Liability Company, provided that the reason is that the company is no longer possible to continue.

It is not necessary that notification to the Tax Agency that the company has not conducted business activities for 3 years or more must be made by the Board of Directors; What happens if the Board of Directors is not present, then it will be impossible for shareholders to notify that the company has not carried out business activities for 3 years or more, if the notification must be through the Board of Directors. The Board of Directors by the Limited Liability Company Law is given the right to do the same with the Shareholders or the Board of Commissioners.

If the notification must go through the Board of Directors, while the Board of Directors may be inactive, their term of office is not extended so that they are not authorized to represent the company, then this will be an obstacle for shareholders to exercise their rights guaranteed by law to apply to the District Court for approval. The determination of the dissolution of the company because the company is no longer possible to continue its business activities. Moreover, if the shareholders only consist of 2 (two) people who each own 50% of the shares in the company, the right of the shareholders to request a court order is very easy to understand that the rights are indeed given to the shareholders and the technical method does not have to be done. Involving the Board of Directors of the Company.

In the explanation of the experts above, the author relates to legal certainty which is a theory that has begun to be developed by experts whose aim is to ensure the implementation of general laws, so that the existence of legal certainty implies that the rule of law aims to create certainty in Limited company.

Expert Prof. Dr. Nindyo Pramono, SH, MS, who is of the opinion: Referring to Article 146 paragraph (1) letter c of the Limited Liability Company Law, shareholders who intend to submit an application for dissolution do not need to first submit a dissolution proposal to other shareholders (*circular resolution*).

So related to the provisions of Article 144 paragraph (1) the right is given to the shareholders to submit a proposal for the dissolution of the PT to the GMS, while Article 146 paragraph (1) letter (c) of the Limited Liability Company Law, the right is given to the shareholders to submit an application. The determination of the dissolution of the PT to the District Court.

The exclusive authority of the GMS is different from that of the Board of Directors and the Board of Commissioners, so it can be said that the GMS has the essence of being the organ with the highest power in a limited liability company. Yahya Harahap found three organs are basically limited liability company that is parallel and side by side in accordance with the separation of powers *(Separation of* Power) set out in laws and constitutions, thus can not be said that the AGM is higher than the Board of Directors and Board of Commissioners. Each has a position and authority in accordance with the functions and responsibilities they have.[5]

M Yahya Harahap is of the opinion that the definition of dissolution of a limited liability company according to the law is in accordance with the provisions of Article 143 paragraph (1) of the Limited Liability Company Law, namely:[6]

1. Termination of the company's business activities;
2. However, the termination of the business activity does not result in the legal entity status being “lost”;

[5] M. Yahya Harahap, *Hukum Perseroan Terbatas*. (Jakarta: Sinar Grafika, 2011), 306.
[6] *Ibid*, 543.

3. The disbanded company only loses its legal entity status, until the completion of liquidation, and the responsibility of the liquidator for the final liquidation process is accepted by the GMS, District Court or Supervisory Judge.

In the theory of legal certainty, there are two things, namely, first, the certainty of the formulation of legal norms and principles that do not conflict with each other, both from the articles of the law as a whole and in relation to other articles that are outside the law. Second, certainty in implementing the legal norms and principles of the law.

So that legal certainty can be seen from two angles, namely certainty in the law itself and certainty because of the law. "Certainty in law" means that each legal norm must be formulated with sentences that do not contain different interpretations. As a result, it will bring obedient or disobedient behavior to the law.

In the opinion of the author, based on the information above, the dissolution of a Limited Liability Company can be carried out in various ways so that legal certainty in dissolving a Limited Liability Company does not have a certainty over the shareholder who has the authority to dissolve it. So that the dissolution of the Company does not eliminate the legal entity status of the Company directly, the new legal entity status ends with the completion of liquidation and the liquidator's responsibility is accepted by the General Meeting of Shareholders (GMS) or the Court.

So that every business entity in any form, whether in the form of a Limited Liability Company, Firm, Foundation, CV, etc., may end or be dissolved by the owners or management of the business entity with certain legal reasons and considerations, such as the period of establishment has expired or the result of a joint decision of the owners or management who wish to dissolve it. Likewise in a limited liability company, the owners or shareholders may dissolve a limited liability company with certain legal reasons and considerations in accordance with the matters stipulated in the Company Law.

Legal Protection for Shareholders, In the Dissolution of the Company, Especially Regarding Parties Who Have the Right to Apply for the Dissolution of a Limited Liability Company (Case Study of Supreme Court Decision Number 1618 K/Pdt/2016)

Based on research conducted by the author based on the decision of the Central Jakarta District Court has given Determination Number 176 /PDT.P/2015/PN JKT.PST.,

dated February 25, 2016 with the following warning: Stating that the application submitted by the Petitioner is a premature; To declare that the Petitioner's application cannot be accepted; Charges the Petitioner to pay court fees in the amount of Rp 15,416,000.00 (fifteen million four hundred and sixteen thousand rupiah);

Decision on cassation in the supreme court Verdict Number 1618 K/Pdt/2016 which explains the litigants PT BARAVENTURA PRATAMA ("PT BVP") is domiciled in South Jakarta, having its address at Office 8, 21st Floor, Units E and F, Sudirman Central Business District Lot 28, Jenderal Sudirman Street Kavling 52-53, Jakarta, represented by Erwin Sutanto as Director , in this case authorize Dr. Maqdir Ismail, SH, LL.M., and colleagues, Advocates at the "Maqdir Ismail & Office *Partners*", having their address at Latuharhary Street Number 6A Menteng, Central Jakarta, based on a Special Power of Attorney dated March 3, 2016; The first Petitioner for Cassation is the Petitioner;

In this case to fight with Opponents: 1. PT ARTHA KOMODITI & ENERGI SERVICES ("PT AKES"), the address is unknown; 2. PT REPUBLIK ENERGI & METAL, (one of the Shareholders of 25,000 shares with a nominal value of Rp. 25,000,000,000.00 [50%] in PT AKES), domiciled at Budi Kemuliaan I Street Number 2, Gambir, Central Jakarta, represented by Vera Likin, as Director, in this case granting power of attorney to Leonard Arpan Aritonang, SH, Advocate at the Law Office "ArpanLaw", having its address at Wisma Metropolitan, Level 3 A, Jenderal Sudirman Street Kavling 29 to 31, Jakarta, based on a Special Power of Attorney April 13, 2016; The Respondents for Cassation first the Respondents; And ADE KORNELIUS, residing at Villa Permata Lippo Karawaci Blok C-8/Number 9, Binong Village, Karawaci, in this case authorizes Leonard Arpan Aritonang, SH, Advocate at the Law Office "Arpan Law", having its address at Wisma Metropolitan, Level 3A, Jenderal Sudirman Street Kavling.

In the decision of the cassation, it is stated that

1. Reject the appeal from the Cassation Petitioner PT BARAVENTURA PRATAMA ("PT BVP");
2. To order the Cassation Petitioner/Applicant to pay court fees at this level of cassation in the amount of Rp500,000.00 (five hundred thousand rupiahs);

In the theory of legal protection, which is one theory that is very important to study, because the focus of this theoretical study is on the legal protection provided to Limited Liability Companies (Legal Entities) or as legal subjects. Limited Liability Company (PT) which is the target of this theory is the protection of the shareholders due to the dissolution of the company by the Court where the PT shareholder is in a weak position, from a juridical aspect.

Legal protection is not far apart from the purpose of the rule of law in Indonesia which is fully formulated in Paragraph 4 of the Preamble to the Law. The 1945 Constitution includes protecting the entire nation and the entire homeland of Indonesia, promoting public welfare, educating the nation's life and participating in carrying out world order based on independence, eternal peace and social justice.

According to Sudikno Mertokusumo, the function of legal protection is that the function of law and legal protection, as the protection of human interests, has a purpose.[7] The law has a goal to be achieved. The main point of law is to create an orderly society, to create order and balance.

This is in line with the opinion of Lili Rasjidi and IB Wysa Putra who in their opinion that the law can be functioned to realize protection that is not only adaptive and flexible, but also predictive and anticipatory.[8]

With the achievement of protection for each Limited Liability Company (PT) the owners of disbanded shares can be protected. In achieving its objectives, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating ways to solve legal problems and maintaining legal certainty.

Based on the decisions contained in the decisions of both the High Court and the Supreme Court (MA) as an independent judicial institution that must provide legal protection to shareholders in the process of applying for the dissolution of a limited liability company to the court. In this way, the certainty of the status of the dissolution of the Limited Liability Company is protected by the directors, commissioners and shareholders.

[7]Sudikno Mertokusumo, *Perlindungan Hukum Bagi Rakyat Indonesia*. (Surabaya: PT. Bina Ilmu, 1987), 2.
[8]Lili Rasjidi, dan I.B Wysa Putra, *Hukum Sebagai Suatu System*. (Bandung: Remaja Rusdakarya, 2003), 118.

In relation to the theory of legal protection, in the sense of legal protection as a description of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace. So that the protection provided is in the form of Preventive Legal Protection. In this preventive legal protection, legal subjects are given the opportunity to file objections or opinions.

With a goal is to prevent losses suffered by shareholders due to the dissolution of the Limited Liability Company (PT). Legal protection is very meaningful for government actions based on freedom of action because with legal protection one is encouraged to be careful in making decisions based on law.

Repressive Legal Protection, Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests and originates from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts regarding the recognition and protection of human rights is directed at the limitations and laying down of community obligations. and government.

In addition to Hadjon, legal protection for the people includes two things, namely:[9]

(1) Preventive legal protection is a form of legal protection where the people are given the opportunity to file objections or opinions before a government decision gets a definitive form,
(2) Repressive legal protection is a form of legal protection which is more aimed at resolving disputes. Conceptually, the legal protection provided for the Indonesian people is an implementation of the principle of recognition and protection of human dignity based on Pancasila and the principle of a state of law based on Pancasila. Legal protection essentially everyone has the right to get protection from the law. Almost all legal relationships must receive protection from the law.

[9]Philipus M. Hadjon, *Perlindungan Bagi Rakyat di Indonesia*. (Surabaya: PT. Bina Ilmu, 1987), 12.

Meanwhile, the Limited Liability Company (PT) Law explains that the preventive legal protection for shareholders. According to the author's opinion, the 2007 Company Law has normatively provided legal protection for legal subjects.

In the aspect of the Supreme Court's decision Number 1618 K/PDT/2016 which does not provide legal protection and legal certainty for shareholders due to the dissolution of the Limited Liability Company (PT) by the court. So that the rights of shareholders are not protected as clearly stated in the preamble to the 1945 Constitution and contained in the Indonesian nation's view of life, namely Pancasila. Aspects of the decision should be based on clear law with legal considerations by the judge. So that the decision can be a reference and lesson for future judges to decide a case.

CONCLUSION

The concept of legal certainty that must be built by the judiciary, namely the Supreme Court judges must provide certainty to shareholders, in the decision of the Supreme Court decision Number 1618 K/PDT/2016 which results in the lack of clarity on who the parties are entitled to file a lawsuit for the dissolution of a Limited Liability Company. The task of the law is also to ensure legal certainty in the relationships that exist in the shareholders. If there is no clear legal certainty, the shareholders will act arbitrarily to each other because they think that the law is uncertain and unclear. Legal certainty itself is also the basis of the realization of the principle of legality.

Legal protection for shareholders, in the dissolution of the company, especially regarding parties entitled to apply for the dissolution of a limited liability company (Case Study of Supreme Court Decision Number 1618 K/Pdt/2016) explains that legal certainty for shareholders based on the cassation decision has an impact on shareholders in a company. The protection given to shareholders is not fulfilled, so there is a need to revamp the decision sector which results in huge losses for the shareholders of the Limited Liability Company (PT). The losses experienced by shareholders are very large losses which have implications for the development of the decision sector. The decision must provide legal protection to the shareholders.

Additional Section

I realize that this paper is still far from perfect, therefore all input and criticism from the author will be accepted and thanked. Finally, I hope this paper can provide benefits for the

world of education and parties related to this research. Thank you all for your attention and help.

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