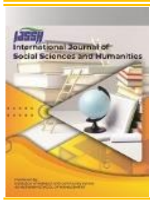

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Application of the Principle of *Separate Legal Entity* in relation to the Responsibility of the Beneficial Owner for Unlawful Acts Committed by a Limited Liability Company

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Abstract

The purpose of this study is to find out how to apply the principle of separation of legal entities (separate legal entity) in relation to the responsibility of beneficial owners for unlawful acts committed by limited liability companies. This research employs a normative juridical method, utilizing both a statutory approach and a conceptual approach. Beneficial owners who use a LLC as a tool to carry out illegal activities or harm other parties have caused various legal problems. In many cases, beneficial owners use layers of ownership to hide their identities, making it difficult for aggrieved third parties to pursue legal liability. This creates injustice and casts doubt on the principles of accountability and fairness in corporate law. The results of this study show that Beneficial Owners are usually not held personally accountable for the company's actions. However, there are important exceptions to this principle. One of the exceptions that allows Beneficial Owners to be held accountable is through the doctrine of *piercing the corporate veil*. This doctrine applies in situations where the separation between the company and its owners (including the Beneficial Owner) is ignored, especially if there is evidence that the company is being used as a tool to commit unlawful or fraudulent acts. If the company is proven to be used for illegal personal gain, such as embezzlement, money laundering, or evading legal obligations, the legal authority may pursue personal liability against the Beneficial Owner.

Contents

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Introduction

In the modern business world, corporate ownership structures are increasingly complex. The existence of a legal entity such as a Limited Liability Company (LLC) allows the separation between the actual owner (beneficial owner) and the owner recorded in the company deed (legal owner). A beneficial owner is an individual or entity that directly or indirectly controls a company, even though his or her name may not be listed as a shareholder. LLC are one of the most widely used forms of legal entities in economic activities in Indonesia. As a legal entity, a LLC has a separate position from its owner, which in law is known as the conce LLC of *a separate legal entity*. This means that all legal actions taken by the LLC are the responsibility of the LLC itself, not the personal responsibility of shareholders or beneficial owners (Syakur 2022).

An LLC is a business entity with legal recognition that is widely preferred by many individuals for operating their businesses. This is because a LLC has three characteristics that are its advantages, including the existence of a company organ that manages the assets of a Limited Liability Company, the separation of assets between the LLC and its owners, and the separation of responsibilities between the LLC and the company's organs.

In Indonesia, a LLC is the most frequently utilized type of legal entity for conducting business activities. A LLC offers significant advantages to its owners, especially in terms of separation between the owner's personal assets and the company's assets. However, this structure is frequently misused by irresponsible parties to carry out illegal activities while hiding behind the company's legal entity status(Agustinus Prajaka Wahyu Baskara 2023).

The phenomenon of beneficial owners who use limited liability companies as a tool to carry out illegal activities or harm other parties has caused various legal problems. In many cases, beneficial owners use layers of ownership to hide their identities, making it difficult for aggrieved third parties to pursue legal liability. This creates injustice and casts doubt on the principles of accountability and fairness in corporate law.

However, in practice, there are cases where the *beneficial owner* of the LLC abuses the legal entity to commit unlawful acts, such as embezzlement of assets, manipulation of financial statements, or acts of corruption. This abuse is often carried out by utilizing the legal entity structure of a LLC to avoid personal liability. In this context, questions arise regarding the extent of the legal responsibility of the beneficial owner for unlawful acts committed by LLC(Lubis and Susanto 2019).

After the birth of Presidential Regulation No. 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of the Prevention and Eradication of Money Laundering and Terrorism Crimes, which (Presidential Regulation No. 13/2018), the definition of Beneficial Owners refers to natural persons who have the authority to appoint or dismiss directors, board of commissioners, administrators, coaches, or supervisors of a corporation, possess the ability to control the corporation, are entitled to or receive benefits from the corporation either directly or indirectly, and are the true owners of the corporation’s funds or shares (Ramadhani and Hutagalung 2016).

In the context of Indonesian law, the role and legal responsibility of beneficial owners for unlawful acts committed by limited liability companies is still a matter of debate. Although the principle of separation of legal personality between a company and its shareholders is widely recognized, there are certain situations in which the disregard of this principle *(piercing the corporate veil)* can be justified to demand personal liability of beneficial owners. One of the main issues is the extent to which beneficial owners can be held legally liable for unlawful acts committed by limited liability companies, especially when they directly or indirectly control decisions that are detrimental to other parties.

Materials and Methods

This study uses a normative juridical method by using a legal and regulatory approach by examining all laws and regulations related to the legal issue being researched and a conceptual approach is carried out when the researcher does not move away from the existing rules because there are no or no governing legal rules (Marzuki 2022).

Results and Discussions

Legal Status of Beneficial Owners in the Organs of Limited Liability Companies

In the context of a LLC, often the beneficial owner is not directly listed as a shareholder or formal controller. However, their existence still has a significant influence on the company's run. A beneficial owner is an individual who effectively enjoys ownership rights in an asset or share, even if the asset or share is legally registered in the name of another person(Syakur 2022).

A beneficial owner, according to Presidential Regulation No. 13/2018, is an individual who owns or controls a corporation through direct or indirect ownership. Beneficial owners have similar rights to shareholders, including the right to receive dividends and control the company's decisions, although their names may not be listed in the company's articles of association (Jatmiko and Prananingtyas 2023).

The essence of the criteria of Article 4 paragraph (1) letters a and b of Presidential Decree No. 13/2018 is that the Beneficial Owner is the party that owns more than 25% of the shares and voting rights, and is recorded in the articles of association. This is similar to the essence of the GMS in the LLC Law, where the GMS functions as a forum for shareholders to channel their interests through voting rights. Shareholders are also usually recorded in the articles of association. Based on Article 8 paragraph (2) letter c of the LLC Law, the names of the shareholders who have taken the shares and their details are included in the Deed of Establishment of the Company. In practice, if there is a change of shareholders, a Share Transfer Deed is usually made based on the resolution of the GMS, and the new shareholders will be recorded in the next Company Deed. This indicates that even if there is a change of shareholders after the deed of incorporation, it will still be recorded in the company's documents (Nivia 2023).

The criteria in Article 4 paragraph (1) letters c and d of Presidential Decree No. 13/2018 are different from letters a and b because they do not include the element "as stated in the articles of association." However, these criteria still reflect the authority usually held by the GMS. Article 4 paragraph (1) letter c of Presidential Decree No. 13/2018 states that a Beneficial Owner is an individual who receives more than 25% of the company's annual profit, similar to the right of shareholders to receive dividends according to Article 71 paragraph (2) of the LLC. The criteria in letter d are relate to the authority to appoint, replace, or dismiss members of the Board of Directors (BoD) and the Board of Commissioners (BoC), which is also the authority of the GMS as stipulated in Article 94 paragraph (1) jo. Article 105 paragraph (2) of the Law on LLC (Akbar, Suryanti, and Suryamah 2022).

Article 4 paragraph (1) letter e of Presidential Regulation No. 13/2018 states that a Beneficial Owner is an individual who has the power to control the company without the need for authorization from other parties. Although there are several actions of the Board of Directors that require the approval of the GMS, such as asset guarantees or changes in business activities, the resolution of the GMS is usually based on deliberation to reach a consensus, or if a consensus is not reached, based on the majority vote in accordance with Article 87 paragraphs (1) and (2) of the LLC Law. This criterion shows that there are parties who have a higher position than the GMS.

Article 4 paragraph (1) letter f of Presidential Regulation No. 13/2018 explains that a Beneficial Owner is an individual who receives benefits from the company, either in the form of money, goods, or services. This is a new conce LLC in the company's legal regime, because in the LLC Law, shareholders are only entitled to receive benefits in the form of dividends.

Application of the Principle of *Separate Legal Entity* in relation to the Responsibility of the Beneficial Owner for Unlawful Acts Committed by a Limited Liability Company

The principle of separation of legal entities or *separate legal entities* is one of the main pillars in the law of limited liability companies (PT). This principle states that a LLC has the status of a legal entity separate from its shareholders. Therefore, all legal actions taken by the company do not necessarily provide direct responsibility to its shareholders, including the Beneficial Owner (Hadju 2023).

The principle *of separate legal entity* is affirmed in various laws and regulations, including Law Number 40 of 2007 concerning Limited Liability Companies (Law No. 40/2007). Based on this principle, a LLC has its own legal rights and obligations that are separate from its shareholders. The advantage of s company, this principle still applies, as long as there is no indication of abuse of the company's entity for personal gain (Harahap 2022).

Although the principle of *a separate legal entity* provides protection to shareholders, including Beneficial Owners, there are exceptions in cases of abuse of the company for unlawful purposes. In such cases, the piercing the corporate veil doctrine may be applied, allowing the distinction between the company and its shareholders to be disregarded, thus enabling shareholders to be held personally liable for the unlawful actions of the company (Saliman 2005).

This doctrine can be applied if it is proven that shareholders, including Beneficial Owners, are using a LLC as a tool to commit fraud or unlawful acts. In this context, the Beneficial Owner can be held accountable for unlawful acts committed by the company if it is proven that he has full control over the company and uses that control for personal gain that violates the law(Nadirah 2021).

Presidential Regulation 13/2018 introduces the conce LLC of Beneficial Owner, which refers to individuals who indirectly control the company or obtain profits from the company without being listed as formal shareholders (Syakur 2022).

Although Beneficial Owners are protected by the principle of a separate legal entity, Presidential Regulation No. 13 of 2018 allows authorities to identify Beneficial Owners and hold them accountable when the company is involved in criminal activities, such as money laundering or terrorism financing.In this case, Beneficial Owners who are proven to use the company for unlawful actions can be held liable, even though it is not formally recorded in the company's ownership structure (Sridana, Budiartha, and Seputra 2020).

Beneficial Owners are in principle protected by the principle of separate legal entities, where limited liability companies are seen as separate entities from their owners, including Beneficial Owners. Thus, Beneficial Owners are usually not held personally liable for the company's actions. However, there are important exceptions to this principle (Trisnowinoto and Murni 2019).

One of the exceptions that allows Beneficial Owners to be held accountable is through the doctrine of *piercing the corporate veil*. This doctrine applies in situations where the separation between the company and its owners (including the Beneficial Owner) is ignored, especially if there is evidence that the company is being used as a tool to commit unlawful or fraudulent acts(Hakim, Hermanto, and Fikri 2019). If the company is proven to be used for illegal personal gain, such as embezzlement, money laundering, or evading legal obligations, the legal authority may pursue personal liability against the Beneficial Owner.

Conclusion

The principle of separation of legal entities provides strong protection for shareholders and Beneficial Owners in terms of liability for the company's actions. However, in the context of unlawful acts, the doctrine of *piercing the corporate veil* allows for an exception to this principle, whereby the Beneficial Owner can be held personally liable if proven to have abused the company for unlawful personal gain. Presidential Regulation No. 13 of 2018 also emphasizes the importance of transparency in the identification of Beneficial Owners to prevent the abuse of limited liability companies in criminal acts. Beneficial Owners are in principle protected by the principle of separate legal entities, where limited liability companies are seen as separate entities from their owners, including Beneficial Owners. Thus, Beneficial Owners are usually not held personally liable for the company's actions. However, there are important exceptions to this principle. One of the exceptions that allows Beneficial Owners to be held accountable is through the doctrine of *piercing the corporate veil*. This doctrine applies in situations where the separation between the company and its owners (including the Beneficial Owner) is ignored, especially if there is evidence that the company is being used as a tool to commit unlawful or fraudulent acts. If the company is proven to be used for illegal personal gain, such as embezzlement, money laundering, or evading legal obligations, the legal authority may pursue personal liability against the Beneficial Owner.

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