

## ANALYSIS OF THE RESPONSIBILITY OF SHAREHOLDERS OF INDIVIDUAL LIMITED COMPANY AS TAX BEARERS

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### ABSTRACT

*This study aims to determine the form of shareholder responsibility in an individual company in the event of tax collection on tax debts. This research is a normative juridical research based on library research to obtain secondary data. Data obtained from legal principles, regulations, and books were analyzed using qualitative methods. This qualitative research produces descriptive-analytical data. The results of the study show that the responsibility of shareholders in an individual company in the event of tax collection on tax debts does not have a value limit of the paid-up capital, even though there is no violation by the shareholders as referred to in the laws and regulations regarding limited liability companies.*

**Keywords:** *Shareholder's responsibility, Individual Limited Company, Tax Bearer*

### ABSTRAK

Penelitian ini bertujuan untuk mengetahui bentuk pertanggungjawaban pemegang saham dalam Perseroan Perorangan dalam hal terjadinya penagihan pajak atas utang pajak. Penelitian ini merupakan penelitian yuridis normatif yang didasarkan pada penelitian kepustakaan guna memperoleh data sekunder. Data yang diperoleh dari asas-asas hukum, peraturan-peraturan, dan buku-buku yang dianalisis dengan menggunakan metode kualitatif. Penelitian kualitatif ini menghasilkan data deskriptif-analitis. Hasil penelitian menunjukkan bahwa pertanggungjawaban pemegang saham dalam Perseroan Perorangan dalam hal terjadinya penagihan pajak atas utang pajak tidak memiliki batasan nilai sebesar modal yang disetor, meskipun tidak ada pelanggaran oleh pemegang saham sebagaimana dimaksud dalam peraturan perundang-undangan tentang perseroan terbatas, mengingat pemegang saham dikategorikan sebagai pengurus di dalam peraturan perpajakan dengan landasan berpikir bahwa pemegang saham termasuk sebagai orang yang nyata-nyata mempunyai wewenang ikut menentukan kebijaksanaan dan/atau mengambil keputusan dalam menjalankan perusahaan.

**Kata kunci:** Tanggung jawab pemegang saham, Perseorangan Perseroan Terbatas, Penanggung Pajak

## A. Introduction

Realizing a prosperous and prosperous society is the goal and aspiration of the founding of the State of Indonesia. The quote in the preamble to the Constitution of the Republic of Indonesia (later abbreviated as the 1945 Constitution) states that:

“Kemudian dari pada itu untuk membentuk suatu Pemerintahan Negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa”<sup>1</sup>

Creating and realizing a prosperous society is certainly not a simple and easy thing to implement. The government as the highest policy maker in a country, needs to plan and make appropriate regulations in order to accelerate the development of national economic growth in the context of realizing people's welfare.

Currently, the Indonesian government always encourages its citizens to always run entrepreneurship in order to improve the welfare of their families. In addition, the government always opens new jobs in order to absorb people who need jobs. The steps taken by the government in order to expand employment opportunities must certainly involve the role of companies both on a multinational, national and local scale. Companies must be given facilities in various fields, such as licensing, distribution and capital.

Then in its development on October 5, 2022, *Dewan Perwakilan Rakyat* (DPR) as the legislative body has passed the omnibus law on the Job Creation Bill to become Law Number 11 of 2020 Concerning Job Creation ("UU 11/2020"). One of the fundamental changes is related to the ease of doing business in micro, small and medium enterprises ("MSMEs"). In the clause Article 1 Number 1 Law 11/2020 states that "*Perseroan Terbatas adalah badan hukum yang merupakan persekutuan modal, didirikan berdasarkan perjanjian, melakukan kegiatan usaha dengan modal dasar yang seluruhnya terbagi dalam saham atau badan hukum perorangan yang*

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<sup>1</sup> *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, alinea ke 4

*memenuhi kriteria Usaha Mikro dan Kecil sebagaimana diatur dalam peraturan perundang-undangan mengenai usaha mikro dan kecil.”*

As is well known, there has been a change in company law, namely Law Number 40 of 2007 concerning Limited Liability Companies (LLC) as lastly amended by Law Number 11 of 2020 concerning Job Creation (“UUPT”). Law Number 11 of 2020 has significantly changed the legal substance in the establishment of LLC in Indonesia, especially those regulated in Law Number 40 of 2007. Based on Law 11/2020, the definition of a Limited Liability Company has been changed by adding the phrase Individual Legal Entities that meet the criteria for MSMEs as stipulated in the laws and regulations regarding MSMEs. Law 11/2020 opens space for the free establishment of a limited liability company by only one investor in the form of an individual limited liability company.

The establishment of a limited liability company which is only established by one person will of course also have implications for authority and accountability. Then what about the responsibility of individual PT shareholders in relation to tax collection. Based on this, the authors feel the need to research regarding “ANALYSIS OF THE RESPONSIBILITY OF SHAREHOLDERS OF INDIVIDUAL LIMITED COMPANY AS TAX BEARERS”.

## **B. Focus of Problem**

1. What are the differences between the establishment of a limited liability company and an individual limited liability company according to statutory provisions?
2. What is the form of responsibility of individual limited liability company shareholders in terms of tax collection?

## **C. Methods**

The research method used in this research is normative juridical. Therefore the research approach used is a statutory approach (statute approach) and a conceptual approach (conceptual approach). Data sources in a study can be classified into 2 (two) types, namely primary data sources and secondary data sources.

Primary legal materials are legal materials that are binding in nature, consisting of:

- a. Code of Civil law;
- b. Law Number 11 of 2020 concerning Job Creation;
- c. Law Number 40 of 2007 concerning Limited Liability Companies;
- d. Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises;
- e. Government Regulation Number 7 of 2021 concerning Facility, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises;
- f. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt;
- g. Law Number 10 of 2004 concerning Formation of Legislation
- h. Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises;
- i. Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities.
- j. Law No.6 of 1983 concerning General Provisions on Taxation as last amended by Law No.7 of 2021
- k. Law No. 19 of 1997 concerning Collection of Taxes by Letter of Force as last amended by Law No. 19 of 2000.
- l. Minister of Finance Regulation No.189/PMK.03/2020 dated 27 November 2020 concerning Procedures for Implementing Tax Collection for Accrued Tax Amounts.

Secondary legal materials are legal materials that explain primary legal materials, namely books, journals and articles relating to Limited Liability Companies and Micro, Small and Medium Enterprises.

The technique used in collecting data for this research is by collecting secondary data consisting of primary legal materials and secondary legal materials that are related to the subject

matter of the research. Meanwhile, the legal material collection model used is the library research model or library study. In this normative juridical law research, data processing is only aimed at data analysis in a descriptive qualitative manner, in which the material or legal materials will then be studied and analyzed for content, so that the level of synchronization, appropriateness of norms, and submission of new normative ideas can be known.

#### **D. Finding & Discussion**

##### **1. Arrangements for the responsibility of shareholders in a Limited Liability Company according to statutory provisions**

The domain of legal responsibility is regarding the fulfillment of rights and obligations. An agreement made by someone will give birth to a responsibility which must be fulfilled. One can make an agreement as desired and can also make an agreement according to statutory provisions. When someone has made an agreement with another party, of course he has an obligation that must be fulfilled and at the same time there are rights that he will get.

Hans Kelsen in his theory known as "Traditional Theory" states that there are two forms of responsibility from legal subjects, namely:

- 1) Accountability based on fault, and;
- 2) Absolute accountability;

Responsibility based on guilt is an accountability imposed on legal subjects (perpetrators) for unlawful acts or criminal acts that have been committed on the basis of mistake or negligence. Meanwhile, Absolute Responsibility is a responsibility in which the legislator considers his actions detrimental, and there is an external relationship between his actions and the consequences. Absolute Responsibility is accountability that focuses on the consequences that arise, regardless of mistakes or the inner attitude of the perpetrator and his actions. So that if there is a legal subject who commits an action or act that results in a loss to another legal subject, then immediately he must be responsible for the loss that arises.

In a limited liability company arrangement, whether it's a capital partnership limited company or an individual limited company, in principle, shareholders are only responsible for

the number of shares they have paid up. There are 3 (three) purposes for limited liability for shareholders, namely:

- a. Limited liability aims to protect shareholders from greater losses beyond what they have invested;
- b. Shareholders are able to transfer the risk of potential business failure to the company's creditors; and
- c. To encourage investment and facilitate corporate capital accumulation.

The basic provisions above do not apply if:

- a. The requirements for a company as a legal entity have not been or have not been met;
- b. The shareholders concerned, either directly or indirectly, use the company for personal gain in bad faith;
- c. The shareholder concerned is involved in an unlawful act committed by the company; or
- d. The shareholders concerned either directly or indirectly unlawfully use the company's assets, resulting in:

The purpose of enabling the elimination of the limited liability of a LLC is so that it is established not solely as a tool used to fulfill the personal goals of the shareholders, resulting in a mix-up of the personal assets of the shareholders and the assets of the LLC, or between the assets of the shareholders and the assets of the LLC. can no longer be distinguished.

Meanwhile, the differences and similarities between an ordinary LLC and an Individual Limited Company can be presented in the following table:

<b>Difference</b>	<b>LLC</b>	<b>Individual Liability Company</b>
Establishment	It consists of at least 2 (two) founders or shareholders	1 (one) Person
Status	Legal entity	Legal entity
Establishment Legality	Deed of Notary and stipulation of the Ministry of Law and Human Rights	Based on the Statement of Establishment (Ministry of Law and Human Rights)

Responsibility	Limited, limited to paid-up capital / owned shares	Limited, limited to paid-up capital / owned shares
Functions of owner and manager	There is a separation of functions between shareholders and management/directors	There is a separation of functions between shareholders and management/directors
Authorized capital	According to the agreement of the founders	According to the ability of the founder

It also needs to be conveyed, in the regulation regarding individual limited company as legal entities, in the opinion of the author, there are potential problems in implementation, which arise from doubts about the legal entity status of individual limited company. The problems are as follows:

1. Based on Article 35 Paragraph (3) and Paragraph (5) Government Regulation Number 7 of 2021 Concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (“PP 7/2021”) has provided clear boundaries regarding the criteria for can become an individual LC. The criteria in question are divided into two, namely the criteria for business capital and the criteria for sales results. Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (“UU 20/2008) as last amended by Law 11/2020 (“UMU UMKM”) does not explicitly define what is meant by venture capital. As we know that retained earnings which are a collection of profit results from year to year are included in the capital group. With unclear and firm regulations related to this definition, if there is an increase in retained earnings exceeding the capital limit as LLC. The company then makes the legal entity status of LLC the company doubtful, causing polemics and of course affecting the limited liability of shareholders at individual LC.
2. Furthermore, PP 7/2021 and the MSME Law also do not clearly define what is meant by sales proceeds, whether sales results are related to business or not. With no firm definition of this matter, it is possible that if there is an individual LC with a business capital of IDR 10,000,000,000 (Ten Billion Rupiah) where there is an *inbreng* worth

IDR 8,000,000,000 (Eight Billion Rupiah) and in the middle of the year the assets The *inbren* is sold at a value of more than Rp. 50,000,000,000.- (fifty billion rupiah), whether the sale is said to be the result of the sale. If so, then according to the law the individual LC no longer meets the requirements because it exceeds the limit on the sales value of an individual LC.

3. Limited Liability Company Law has expressly stated that limited liability companies have limitations because there is a separation of assets. If the legal entity status is lost according to law, the shareholders will be personally responsible for all engagements and company losses. This is expressly stated in Article 7 Paragraph (5) and Paragraph (6). However, this provision only applies to capital partnership companies. This provision is a "cut off time" for equity partnership companies which can cause shareholders to be responsible up to their personal assets if it has exceeded 6 (six) months since the number of shareholders becomes less than 2 (two) shareholders. Then what about the "cut off time" for Limited Liability Company. Individuals who according to law have lost their status as UMKM (*Usaha Mikro, Kecil dan Menengah*) while the law does not provide a time limit for how long it will take for an individual LC to convert into a capital partnership when an individual LC no longer meets the criteria for being an UMKM, so that based on Article 153J Limited Liability Company Law, the status of a legal entity Individual LCs disappear as soon as they no longer meet the MSME criteria. This legal vacuum may become a potential for disputes in the future, as a result, the liability is not limited to paid up capital.

## **2. Analysis of Individual Limited Liability Company Liability in the context of tax collection**

Tax Collection is a series of actions so that the Tax Bearer pays off the tax debt and tax collection costs by reprimanding or warning, carrying out instant and simultaneous billing, notifying the Enforcement Letter, proposing prevention, carrying out confiscation, carrying out hostage taking, selling goods that have been confiscated. The series of tax collection actions include:

- a. issue a Reprimand Letter;
- b. issue and notify the Enforcement Letter;
- c. carry out the confiscation;
- d. make announcements of auctions and auctions, for confiscated goods that are sold by auction;
- e. use, sell, and/or transfer confiscated Goods, for confiscated Goods that are excluded from sale by auction;
- f. proposing Prevention;
- g. carry out hostage-taking; and/or
- h. issue an Instantaneous and Simultaneous Billing Order.

Tax collection actions by the tax authority must be addressed to the tax bearer. In a limited liability company, the person responsible for the tax is the agency and/or representative. Representatives in question are management and people who clearly have the authority to participate in determining policies and/or making decisions in running the company. The definition or criteria of a real person are:

- a. a person authorized to sign contracts with third parties and/or sign checks;
- b. a person authorized to appoint, replace, or dismiss members of the board of directors, members of the board of commissioners, heads of representatives, heads of branches, persons in charge, administrators, supervisors, leaders, or positions of the same rank;
- c. a person who has the authority or power to influence or control a Corporate Taxpayer without having to obtain authorization from any party; and/or
- d. a person who is the actual owner of the shares or capital of the Corporate Taxpayer.

Management and people who clearly have the authority to participate in determining policies and/or making decisions in running the company are strictly regulated based on tax provisions, the amount of responsibility for tax debts is jointly and severally responsible for all Taxes Payable and Tax Collection Fees.

The implementation of tax collection actions, normally, begins when the tax debt is past due, and the implementation must be carried out according to the stages of collection and

sequentially. However, collection of tax debts can be done without waiting for the due date and not done sequentially through a mechanism called instantaneous and all at once tax collection. The parameters for taking tax collection actions immediately and at the same time are if:

- a. The Tax Bearer will leave Indonesia forever or intends to do so;
- b. the Taxpayer transfers the goods owned or controlled in order to stop or reduce the company's activities, or the work it does in Indonesia;
- c. there are indications that the Tax Bearer will dissolve his business entity, or merge his business, or expand his business, or transfer the company he owns or controls, or make other changes in form;
- d. the business entity will be dissolved by the State; or
- e. there is confiscation of the Tax Bearer's goods by a third party or there are signs of bankruptcy.

In accordance with the elucidation of Article 32 paragraph (4) of the Law on General Provisions and Tax Procedures, it is stated that a person who clearly has the authority to determine policies and/or make decisions in the context of carrying out company activities, for example, has the authority to sign contracts with third parties, sign checks, and so on, even though the person's name is not listed in the composition of the management as stated in the deed of establishment or the deed of amendment, including in the meaning of the management. The provisions in this paragraph also apply to commissioners and majority or controlling shareholders.

Besides that, in accordance with Article 7 paragraph (2) of the Minister of Finance Regulation No.189/PMK.03/2020 dated 27 November 2020 concerning Procedures for Implementing Tax Collection on the Amount of Accrued Tax, it states that the action of collecting against management is carried out against directors, commissioners, people who clearly have the authority to participate in determining policies and/or making decisions in running the company and shareholders. As for the amount of responsibility for directors, commissioners and people who clearly have the authority to participate in determining

policies and/or making decisions in running the company, it is stated that they are personally and/or jointly responsible for all Taxes Payable and Tax Collection Fees, while the shareholders are said to be responsible for Taxes Payable and Tax Collection Fees proportionally based on the portion of share ownership of Corporate Taxpayers Tax Payable. Thus, in relation to the collection of taxes on tax debt, the limited liability of shareholders is not adhered to as stipulated in the laws and regulations on Limited Liability Companies. Tax provisions adhere to absolute responsibility in this matter.

## **E. Conclusion**

1. In a limited liability company arrangement, whether it's a capital partnership limited company or an individual limited company, in principle, shareholders are only responsible for the number of shares they have paid up. The basic provisions above do not apply if:
  - a. The requirements for a company as a legal entity have not been or have not been met;
  - b. The shareholders concerned, either directly or indirectly, use the company for personal gain in bad faith;
  - c. The shareholder concerned is involved in an unlawful act committed by the company;  
or
  - d. The shareholders concerned either directly or indirectly unlawfully use the company's assets, resulting in:

The purpose of enabling the elimination of the limited liability of a LLC is so that the PT is established not solely as a tool used to fulfill the personal goals of the shareholders, or if there is bad faith on the part of the shareholders.

2. Regulations related to the amount of shareholder responsibility in relation to tax collection for tax debt, do not refer to the Limited Liability Company Law, in tax collection it adheres to the theory of absolute liability, meaning it does not consider elements of error or negligence but focuses more on the consequences, namely losses, in this case the form of losses is in the form of loss of potential state revenue derived from the tax. Besides that, from the perspective of tax regulation, shareholders are categorized as administrators, this

is stated in Article 7 paragraph (1) letter a of the Minister of Finance Regulation No. 189 of 2021 concerning Procedures for implementing tax collection on the amount of tax still to be paid.

## **F. Suggestion**

1. Granting legitimacy in the establishment of a LLC by one person provides an open space for possible risks of unlawful acts and crimes committed by an individual limited company and the unclear setting of criteria and the portion of the responsibility of the taxpayer for the tax debt, can also provide an open space for the possible risk of abuse of authority by officials tax. Therefore, it is important to immediately make clear and firm implementing regulations, both on implementing regulations on the Limited Liability Company Law or implementing regulations on the Tax Law, not to be due to the ease of implementing the establishment of a LLC and unclear criteria and law enforcement in the field of taxation, do not let it turn into an arena for seeking personal gain on a large scale both for entrepreneurs as taxpayers or tax collectors. For this reason, the author's suggestion is that it is necessary to make clear rules in the implementation of individual limited company, both derivatives of the implementation of the Limited Liability Company Law and the Tax Law.
2. For the sake of realizing justice, it is better if the tax regulation regulates parameters clearly and unequivocally that regulates the problem when the shareholder's accountability exceeds the amount of paid up capital and it is inappropriate if the shareholder is categorized as a manager.

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- c. Law Number 40 of 2007 concerning Limited Liability Companies;
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