

LEGAL RESPONSIBILITY OF THE HOLDING COMPANY TO SUBSIDIARIES IN THE LETTER OF APPOINTMENT AND DETERMINATION OR ATPM AT PT. THERMO TECH SOLUTIONS ACCORDING TO LAW NO. 20 OF YEAR 2016 ABOUT BRAND

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ABSTRACT

The rapid progress of the business world has its influence on businesses and companies. To spread its wings and develop its business formed an independent limited liability company but still in the same ownership and control that is still centralized commanded by a company commonly referred to as a holding company. In its activities, please be aware of the position of the holding company with subsidiaries as stated in the Statement and Appointment of ATPM regarding the use of the brand. Therefore, the issue raised in this thesis is how the holding company is responsible for the subsidiaries in the ATPM Statement and Appointment letter regarding the brand. This research uses the empirical legal research method or also called the observation method that is by processing and using field data as the main data source and library material related to the problem. Based on the results of the study, it is known that the responsibility of the holding company as a subsidiary in the letter of Appointment and Determination of ATPM regarding the brand is the holding company is fully responsible for the quality of products marketed by its subsidiaries, and the subsidiaries are fully responsible in case of brand misuse.

Keywords: Responsibility, ATPM, Holding Company, Subsidiaries, UU No.2016

INTRODUCTION

The rapid progress of the business world has its influence on business people and existing companies. To spread its wings and develop its business by forming a limited liability company that is independent but still under the same ownership and control which is still centralized within certain limits. For this reason, the company that was formed together with the company that previously existed, with the same owner or has a special relationship, is owned and commanded by an independent company as well. The owner and command company is referred to as a holding company or holding company. A holding company or holding company is often referred to as a holding company, holding company, or controlling company. As the central leader, the holding company has the right to control and coordinate the subsidiaries in supporting the collective goals of the group companies as an economic unit.

What is meant by a holding company is a company that aims to own shares in one or more other companies and/or regulate one or more other companies. The holding company acts as the central leadership controlling and coordinating the subsidiaries collectively as a

management unit. With the above authority, the holding company known as the holding company.

In the discussion above, it has been said that the existing companies have formed a new company as a form of expansion in the business world they are involved in. The companies formed are still owned and controlled by the limited liability companies that form them. Thus the company that is owned and controlled is referred to as a subsidiary. In-Law Number 1 of 1995 concerning Limited Liability Companies, the definition of a subsidiary contained in the explanation of Article 29 of the Act. The explanation of this article states that what is meant by a subsidiary is a company that has a special relationship with another company that occurs because more than 50% (fifty percent) of its shares are owned by the holding company and more than 50% (fifty percent) of its shares. percent) of the votes in the GMS are controlled by the holding company and/or control over the running of the company, the appointment, dismissal of directors, and commissioners are strongly influenced by the holding company.

The existing legal relationship between the holding company and its subsidiaries turns out to be quite beneficial for the development of their business world. Because from the holding company's perspective, one of the reasons they have or establish a subsidiary is as a form of their expansion in the business world. Thus, the presence of a subsidiary will provide its advantages. From the subsidiary side, the existence of legal relationship between him and the holding company will make it easier for him to develop their business. Especially if the subsidiary is a new company that is starting its business. Automatically in addition to requiring good management, he also needs funds to support the pace of his business. Likewise with subsidiaries that have developed and want to expand in the financial sector, or restructure their capital.

CONCEPTUAL FRAMEWORK

This research was conducted in March 2021 using a qualitative descriptive approach. This type of research is empirical law (socio-logical). Qualitative research analyzes social life by describing the social world from natural interpretations of individuals (informants).

The data collection technique was done by interviewing informants. Qualitative research is measured using theory to provide a series of ready-made hypotheses to be tested with existing literature. The results of this research will be later used as input in building a better understanding of the government's efforts to design regulations.

DISCUSSION

- A. Legal relationship between the holding company to the actions of PT.Thermo Tech Solutions related to trademark use.

The formation of a group company causes a new legal problem, this is due to the absence of developing regulations regarding companies with this form of group. Group companies themselves are currently still bound by the Limited Liability Company Law which is intended to regulate single companies, so that currently the holding and subsidiary

companies are still considered as independent legal entities that are separate from one another.

The relationship between the holding company and its subsidiaries can come from several aspects, namely:

1. Holding Company's Ownership of Subsidiary's Shares Holding's ownership of a significant amount of subsidiary's shares gives authority to the holding company to act as the central management controlling the subsidiaries as a management unit. Ownership of shares in a subsidiary gives the holding company voting rights to control the subsidiary through various existing control mechanisms, such as the general meeting of shareholders.
2. General Meeting of Shareholders (GMS) The holding company has the authority to control subsidiaries through the mechanism of the GMS of subsidiaries. In the GMS of the subsidiary, the holding company can determine strategic matters that can support the achievement of the group company's goals as an economic unit, among others through the determination of the company's long-term goals in the form of a five-year business plan known as a strategic plan. In this strategic plan, the directors of the holding company determine the company's basic policies consisting of the company's vision, mission, culture, and strategic goals. This basic policy of the holding company is followed by all subsidiaries in preparing the long-term plans of each company.
3. Placement of members of the Board of Directors and/or Board of Commissioners of Subsidiaries.

Based on the deed of cooperation statement of PT. Thermo Tech Solutions wrote that the holding company gave full power to the subsidiary, with the right of substitution to state the decision that had been taken unanimously at the meeting.

Group relationships are usually defined as the relationship between legal entities, especially legal entities in the form of a company, for example: Limited Liability Company. This relationship exists if the leadership of a company consisting of two or more companies is sought so that between the companies there is more or less a close arrangement economically, financially, and organizationally.

Raaijmakers views that the notion of a joint venture can be seen from the partial form of cooperation between companies that are "juridically and economically, each is independent". According to Emmy Pangaribuan, in a joint venture, only a certain part of the economic activities of the companies of each partner is brought into a joint company. The similarity with fusion is the merging of the activities of the companies together. However, it is different from fusion because in a joint venture relationship only a part of the activities of the joint venture company is only partially and the activities of the company and each of the collaborating partners are merged, while according to Van Schilfgaarde, infusion the stand-alone organizations are drawn together under one leadership so that from an economic point of view they form a unity

As an independent legal subject, all legal actions carried out on behalf of a Limited Liability Company with all the consequences of such legal actions are the responsibility of the company that entered into or made an agreement. A subsidiary in the form of a Limited Liability Company should have the authority to make its agreement without interference from the holding company, but as a group company most of its shares are owned by the holding company, a subsidiary in the form of a Limited Liability Company can be said to be no longer an independent company. because the holding company interferes with management, policy, business decisions taken by the director as the company's operational head. In carrying out the company's operations, a director must comply with everything that has been stipulated in the law and the articles of association, in the articles of association the authority limits of the subsidiary have been made, for example: in making credit agreements with banks it must be with the approval of the holding his company. This is one of the controls of the holding company, but with these restrictions, it can be said that the subsidiary is no longer authorized to agree, due to interference from the holding company.

The relationships that exist within the group company can create an atmosphere that the group leader (holding company) to represent the interests of the group as a unit, cannot think about fulfilling the interests of third parties related to subsidiary companies within a group of companies. This of course will be detrimental to third parties and due to the complex nature of the group company network, it is not an easy thing for him to prove that the attitude or actions of the holding company have caused harm to him.

From the economic point of view, the group company performs its function as an economic unit, the company acts as the central leader who controls and synergizes the business activities of the subsidiaries in an economic unit that collectively supports the group's business interests. Group companies as an economic entity are shown through the presentation of consolidated financial statements of group companies, when the holding company consolidates the financial statements of its subsidiaries into consolidated financial statements of the holding and subsidiary companies.

Thus, it is one of the boundaries for the holding company to interfere in the business affairs of the subsidiary, if the actions do not harm the parties mentioned above. It is time for a rule regarding the legal relationship between the holding company and its subsidiaries because the rules regarding single companies can no longer accommodate the form of group companies that are growing in society.

B. The responsibility of the holding company for the actions of PT. Thermo Tech Solutions related to the use of trademarks

In discussing the chosen legal issue, namely the civil liability of the holding company within a group company, it is necessary to first describe the study of the company and the

system of accountability. These studies are used as a benchmark to find out how the accountability within a group company is, especially the responsibility of the holding company to its subsidiaries. As it is known that in Indonesia there are no laws and regulations that specifically regulate responsibilities within group companies, so that in Indonesia, a single company approach is still used and uses the provisions of Law no. 40 of 2007 concerning Limited Liability Companies. In the Limited Liability Company Law, there is a stipulation that shareholders are given protection in the form of limited liability if the company suffers a loss or is unable to fulfill its obligations to third parties. This protection is also applied to the holding company within a group company as a shareholder of a subsidiary.

Departing from the concept and principle of limited liability of shareholders it can be concluded:

- The Company as a legal entity is a legal unit with separate authority and capacity from shareholders to control wealth, make contracts, sue and be sued, continue to live and exist even though shareholders change and directors are dismissed or replaced;
- The assets, rights and interests, and responsibilities of the company are separate from the shareholders;

The use of a mark by an unauthorized party to sell goods and/or services is clearly a violation because it is not in accordance with the laws and regulations which clearly prohibit trading or producing counterfeit branded goods or using other people's brands to gain greater profits.

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2. The assets, rights and interests, and responsibilities of the company are separate from the shareholders;
3. Furthermore, the shareholders according to the law following the provisions of Article 3 paragraph (1) of the Company Law, have immunity from the obligations and responsibilities of the company, because between the shareholders and the company there are differences and separation of the legal personality of the subsidiary company.

Given the prolonged economic crisis as it is today, many manufacturers are dealing with this by combining genuine branded goods with counterfeit branded goods that are physically similar to the original. The number of fans of these counterfeit goods is due to the relatively cheap price compared to the price of the original goods. Moreover, among the public there are known super quality goods which according to them are counterfeit, the quality is almost the same as the original and the price is of course affordable and

profitable for the producers. By utilizing well-known brands, illegal producers do not need to apply for a registration number to the Director-General of Intellectual Property Rights or spend millions of rupiah to build a brand image. They do not need to create a research and development division to be able to produce products that are always up to date, because they just copy other people's products. Economically, utilizing well-known brands brings considerable benefits and the facts on the ground prove this. In addition, it is also supported by the purchasing power of consumers who are mediocre but still want to look stylish today. One of the attractions of fake branded products is that they are very cheap compared to the original price of the goods. Various items that are often counterfeited, such as bags, clothes, pants, jackets, and also various electronic items that are very easy to obtain and are found in big cities, especially the city of Jakarta. The circulation is also quite wide, starting from street vendors to prestigious shopping centers.

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Furthermore, the shareholders according to the law by the provisions of Article 3 paragraph (1) of the Company Law, have immunity from the obligations and responsibilities of the company, because between the shareholders and the company there are differences and separation of the legal personality of the subsidiary company.

C. The legal position of the holding company against PT. Thermo Tech Solutions related to brand use

This special relationship between the holding company and its subsidiaries arises through share ownership, leadership, and contracts. The holding company has the authority to become the central leader who can control and coordinate the subsidiaries in an economic unit. This central leadership describes a possibility to exercise decisive rights or influence, the exercise of influence in this group company can reduce rights or dominate the rights of other companies.

The relationship between the holding company and its subsidiaries is caused by the following:

1. Share ownership of the subsidiary by the holding company
2. General meeting of shareholders
3. Linkage through voting rights agreements
4. Linkage by contract

Subsidiary companies are whether or not there is evidence of control by the holding company. This control fact is important because it relates to the imposition of the holding company's legal responsibility on the implications of the subsidiary's legal actions that lose juridical independence due to carrying out the holding company's instructions/policies to third parties from the subsidiary company (minority shareholders, creditors, or employees). Thus, the fact that the holding company controls the subsidiary company can be used as the basis for the application of the doctrine of piercing the corporate veil so that the holding company can be held responsible for unlawful acts committed by the subsidiary.

Thus, it can be concluded that shareholders have limited liability for their paid-up shares in accordance with the doctrine of separate legal personalities of a company. However, shareholders based on the doctrine of piercing the corporate veil can be held accountable for their personal assets. Likewise, the holding company can be accounted for together with the subsidiaries.

Control by the holding company will be related to the interests of various parties, so various conflicts of interest are very likely to occur. The parties who may experience a conflict of interest can be mentioned as follows:

1. The Holding Company (Company Owner);
2. The Management of the Holding Company;
3. The Board of Commissioners of the Holding Company;
4. Minority Shareholders in the Holding Company;
5. Subsidiaries;
6. The Management of the Subsidiary;
7. The Commissioners of Subsidiaries;
8. Minority Shareholders of Subsidiaries;
9. Workers/Employees at the Holding Company;
10. Workers/Employees at Subsidiaries;
11. Creditors from the Holding Company; and
12. Creditors from Subsidiaries.

The form of the Holding Company's Responsibility for the Subsidiary's legal actions after the application of Piercing The corporate veil is compensation. The compensation charged to the holding company after the application of Piercing the corporate vision to the subsidiary's legal actions is determined from the point of view of the principle of legal

responsibility, which is based on liability based on fault or based on absolute liability. The compensation carried out by Holding against the legal actions of the subsidiary can be fulfilled after going through the principle of responsibility above, it can be concluded that the compensation is punitive compensation. Punishment compensation is compensation in a large amount that exceeds the actual amount of loss. A large amount of compensation is intended as a punishment for the perpetrator, in this case, is the holding that carries out business reality against the actions of the company's legal subsidiaries.

CONCLUSIONS

Based on various descriptions of the problems above, the following conclusions can be drawn:

1. The legal relationship between the holding company and its subsidiaries is already in the articles of association of the subsidiary. The holding company is the majority shareholder of its subsidiaries so that the holding company is authorized to supervise its subsidiaries only to the extent of shareholders then regulated in the articles of association. In addition, every decision made by the subsidiary must be approved by the holding company. Between the subsidiary and the holding company, each of which is independent. The holding company and the subsidiary company have their articles of association, which is a positive law for the Limited Liability Company, which if violated will result in the transaction being void. If there is a party that sues a subsidiary, if there is a subsidiary that violates rights, then what is being sued by the party who feels aggrieved is the subsidiary itself. The holding company needs to be included because legally, the holding company is the supervisor of the activities of its subsidiaries.
2. The holding company can give full responsibility for the legal actions of its subsidiary by making the assets of the holding company as a credit guarantee, namely as a corporate guarantee, and if it can be proven that the holding company provides guarantees to third parties in additional agreements. The holding company is also fully responsible for complaints on the quality and quality of the products produced by the holding company as stated in the Brand Holder Sole Agent Letter (ATPM).
3. The form of a holding company run by PT. Toilon is an operating holding company, where the holding company, namely PT. Toilon not only runs business activities but also controls and supervises subsidiaries. Holding company at PT. Toilon was formed to export finished goods and only has an export trade permit, so from the start, it was thought of forming a holding company to form a subsidiary that focuses on national sales. Holding company at PT. Thermo Tech Solutions is carried out through takeovers, this is justified in Article 1 number 11 of the Company Law which explicitly states that a group company can be formed through the takeover of share ownership in a subsidiary by the holding company with juridical implications in the form of a transfer of control over the company.

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