

Legal Liability Company Based On Sharing Economy to Service And Consumer Providers

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ABSTRACT

This research aim to knows and analyzes the responsibility of Sharing economy companies toward providers and consuments. The research used normatif method. The results are: the responsibility of sharing economy company could be base on civil law responsibility or administraive. The compony also able to have a freedom to retacle any problem with provider which is bias in constitution. The sharing economy company is equal with the ordinary company before the law. The researh results recommendation that there must be a renew of the act of corporation. The government should make socialization and give some education to the citizen upon using shopistcated technology and giving a good role as an umpire to protect citizen human right.

Keywords: legal liability; sharing economy; provider; consument;

INTRODUCTION

Since the independence movement of the Indonesian nation has developed a sense of democracy in recognition that it is the people who hold sovereignty. This is shown by the proclamation of independence which uses the sentence on behalf of the Indonesian people, that sovereignty in the hands of the people is a statement of the nature of state democracy. Democracy is also regarded as a vehicle to bring government closer to the small people. The government should care more and be more aligned to the small people not only politically, but also economically. Economic democracy is an economic activity implemented by the people, by the people and for the people in which economic democracy prioritizes the prosperity of society and not individuals. The value of society in economic life is justice. Thus, talking about economic democracy is talking about the economic sovereignty of the people based on justice in accordance with the mandate of Pancasila.

An important element found in a democracy-based economy for the nation is the principle of kinship but not individualism and not collectivism as taught by Marxism. In particular, social justice in the fifth principle of Pancasila emphasizes the principle of economic justice and welfare or social *rechtvaardigheid*, ie equality, emancipation, and participation desired by this nation not only in the political sphere but also in the economic field. The pace of economic development of the nation is said to have progressed very rapidly. Even according to the minister of state finance, Indonesia is in the G20 ranks third in terms of the level of growth. It can be said that the economic development of Indonesia

in the eyes of the world today is better than a few years ago. This can be evidenced by the increasing purchasing power of the public against certain goods, and the increase in income per capita community, although still in small scale.

One of the developments of the economic model in Indonesia is the emergence of trendy sharing economy adopted by several multinational companies in Indonesia at this time. Actually, In modern day life, the concept of sharing economy has long been known. The simplest form of this concept is to borrow money between neighbors. The Bank essentially also applies the concept in which the bank brings together the owner of the resource (the depositors) and the resource user (the borrowers). Humans are essentially sharing beings. The history of human travel shows that the concept of sharing has been known since ancient homo sapiens. They hunt together and share the hunt. Similarly, when human civilization has reached the stage of settling and planting crops. They share knowledge and land to improve their welfare. Sharing is the basic nature of human nature to meet the needs of life.

The phenomenon itself is a very horrendous business world today. Uber who has absolutely no taxi assets is the largest taxi company in the world. Even the value of the newly established company for less than 8 years is 68.8 billion USD, bigger than the company's value from the American auto giant, Ford, General Motor and Chrysler. AirBnB is now the largest accommodation provider in the world, although it has no assets in the form of hotels and properties. Alibaba founded by Jack Ma in 1999 is currently the largest retail store in the world, although it also has no store assets. Its market capitalization has exceeded the world's largest online book store, Amazon, which also had no physical assets in the form of a book store.

In the national realm, similar phenomena occur. GoJek is no longer just the biggest "ojek" company in Indonesia but has expanded into logistics services (GoBox), food delivery (GoFood) even to massage services (GoMassage). Though they also have no assets in the form of vehicles. Traveloka is Indonesia's largest airline and airline service provider, defeating traditional travel agent players such as Anta Group, Panorama, and Bayu Buana. Bukalapak which has no stalls is the leading online marketplace in Indonesia that provides sales facilities from consumers to consumers.

This dramatic change certainly shakes the establishment of traditional players in their respective industries. Disruptive innovation changes the business landscape (*business landscape*) and even makes the business more difficult and complicated to predict. The breakthrough of start-up companies that prey on the incumbents does not provide the space for the incumbents. The source of traditional *competitive advantages* seems to be obsolete with the rise of new technology-based players.

However, new problems arise. Not a few several groups to conduct demonstration activities to stop the activity of this sharing economy company. In 2016, the government had issued a rule to boycott GoJek to stop doing company activities and eventually revoked again. In addition, demonstrations were carried out by the 'companies' themselves, ie service providers because of the imbalance of liability resulting from the legal consequences that have so far lacked clear regulation, so neither the service providers as partners who are not part of the company nor consumers do not get a clear legal certainty. As the concept of the new economic model and adapted from the outside, the form of regulations issued by the government is still said to be minimal enough to give flexibility to the quo company to regulate the terms and conditions of each in entering into agreements with the parties service providers. Not a few cases of mutual interconnection between the service providers with service providers when there are legal problems with consumers. This is because the sharing economy-based companies do not have the same regulation that regulates principally both within the Law of Limited Liability Company as the corporate legal umbrella as well as in other legal products. Of course, this is considered to be contrary to the legal foundation of legislation set forth in Law No. 12 of 2011 on the Establishment of Legislation that protects every citizen from legal uncertainty caused by the legal vacuum.

Sharing economy is already large although still young. Many questions have to be examined about it as a result of the blurring of the boundary between personal and commercial affairs with all the complicated effects on the lives of the local, national, regional and international public, family, community and public policy.

From the above background, the authors formulate problems in the form of research questions, namely how the form of legal responsibility sharing company economy against the legal consequences that occur with providers and consumers? and what is the status of the company based on the sharing economy in Indonesia?

METHOD

The method used to explore the problems that have been exposed is to use qualitative methods with descriptive comparison and historical approach. Data collecting technique used is the literature study. Data analysis techniques used in this writing is a model of Miles and Huberman. Model Miles and Huberman consists of three stages, namely data reduction, display data and conclusion drawing/verification. Reduction of data means summarizing, sorting the key points so as to provide a clear picture and make it easier for writers to perform further data collection. Once reduced, the data will be presented in the form of brief descriptions, relationships between categories and so forth.

The last stage is to conclude all the results that have been done before so that will look at new findings in writing.¹

ANALYSIS AND DISCUSSION

Forms of Liability of Sharing Economy Company Law

In carrying out the responsibilities of a company, it will always be linked to Good Corporate Governance (GCG) principles or good corporate principles, whereby GCG is a system, and a set of rules governing relationships between various stakeholders and describes 5 (five) principles:²

1. Transparency (information disclosure)

Simply can be interpreted as openness. In realizing this principle, the company is required to provide sufficient information, accurate, timely about the company to all stakeholders.

2. Accountability (accountability)

Clarity of function, structure, system, and accountability of corporate elements. If this principle is effectively implemented, there will be clarity on the functions, rights, obligations, and authorities and responsibilities between shareholders, the board of commissioners and the board of directors.

3. Responsibility (accountability)

Company compliance with applicable regulations, including taxes, industrial relations, occupational health and safety, environmental protection, maintaining a conducive business environment with the community and others. By applying this principle, it is hoped to make the company aware that in its operational activities, the company also has a role to be responsible in addition to shareholders also to stakeholders.

4. Independence (independence)

Essentially this principle requires that companies be professionally managed without any conflict of interest and without the pressure or intervention of any party that is inconsistent with existing regulations.

¹ Sugiono, P. (2012). *Metode Penelitian Kualitatif-Kuantitatif dan R&D*. Jakarta: Alfabeta.

² Yusuf Wibisono, Yusuf, "Membedah Konsep & Aplikasi CSR Corporate Social Responsibility", Gresik: Fasco Publishing, 2007 hal. 11-12 dan lihat juga Andi Firman, *Ibid*. Lihat juga I Nyoman Tjager, *Corporate Governance: Tantangan dan Kesempatan Bagi Komunitas Bisnis Indonesia*, (Jakarta: PT. Prenhallindo, 2003), hal. 26 yang menyebutkan bahwa Forum for Corporate Governance in Indonesia (FGCI) memberikan definisi corporate governance sebagai berikut: "...seperangkat peraturan yang mengatur hubungan antara pemegang, pengurus (pengelola) perusahaan, pihak kreditor, pemerintah, karyawan, serta pemegang saham kepentingan internal dan eksternal lainnya yang berkaitan dengan hak-hak dan kewajiban mereka atau dengan kata lain suatu sistem yang mengendalikan perusahaan. Tujuan Corporate Governance ialah untuk menciptakan nilai tambah bagi semua pihak yang berkepentingan (stakeholders). Istilah "corporate governance" untuk pertama kali diperkenalkan oleh Cadbury Committee pada tahun 1992 yang menggunakan istilah tersebut dalam laporan mereka yang kemudian dikenal sebagai Cadbury Report. Laporan ini dipandang sebagai titik balik (turning point) yang sangat menentukan bagi praktik corporate governance di seluruh dunia, lihat juga Buana, A. P. (2017). Konsistensi dan Pengaruh Implementasi Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan terhadap Praktek Perkawinan Beda Agama di Makassar. *Jurnal HAM*, 8(2), 117-129.

5. Fairness (equality and fairness)

The existence of fair treatment in fulfilling the rights of shareholders and stakeholders in accordance with applicable laws and regulations. Fairness can be a driving factor that can monitor and provide equal treatment coverage among various interests within the company.

Good corporate governance (GCG) is necessary for business conduct to have good direction. The principle of responsibility as one of the principles of GCG is a principle that has a close relationship with corporate responsibility. The application of corporate responsibility is one form of implementation of the GCG concept as a business entity that is responsible for society and its environment.

The GCG Principles adopted by the Organization for Economic Cooperation & Development place the principle of accountability as a pillar of the upholding of GCG. The principle of accountability is realized with the realization that responsibility is a logical consequence of authority, awareness of social responsibility, avoiding abuse of power, and creating professionalism while upholding ethics in doing business, creating and maintaining a healthy business environment.

This means that the company as a social organization founded and run by humans not only aims to seek benefits for shareholders including shareholders and employees but also for the interests of stakeholders including the community and the environment. The principle of liability is the compliance or compliance in the management of the company against sound corporate principles and applicable legislation. Applicable regulations include those relating to taxation, industrial relations, environmental protection, occupational health and safety, payroll standards, and fair competition.

The principle of accountability also includes matters related to the fulfillment of corporate social responsibility as an integral part of society.³ This principle of accountability also criticizes the teachings of Milton Friedman who teach that only humans have moral responsibility. If the business has a responsibility, according to Friedman, it is a personal responsibility, not a responsibility on behalf of the whole company. The reason, moral responsibility cannot be transferred to another party, and therefore irrelevant said the company has moral responsibility. Friedman maintains that corporate responsibility is limited to a profit-making sphere. Thus, the company's moral responsibility is judged only and measured by the extent to which it succeeds in making the most profit.⁴

The principle of accountability also requires companies to run their business to be more responsible for social and environmental issues. According to E. Merrick Dodd, the

³ Albert Widjaja, "Mencari Arah Bisnis yang Bermoral", 50th Years Festschrift in honor Stephen Tong, (Jakarta: Reformed Center for Religion and Society STEMI, 2007), hal 650.

⁴ Sonny Keraf, *Etika Bisnis Tuntutan Dan Relevansinya*, (Yogyakarta: Penerbit Kanisius, 1998), hal. 118.

company is a public entity that not only has obligations and responsibilities to one group but also to many parties.⁵

According to Vernon A. Musselman and John H. Jackson that the term corporate social responsibility originally meant financial contributions to the arts or local community, and possibly ethical behavior.⁶ In line with the development of the era of understanding of responsibilities experienced the addition of meaning and at the same time the scope of corporate social responsibility, that corporate social responsibility includes health, consumer information, not run discrimination and maintain the environment.⁷

A Sonny Keraf sees the scope of social responsibility, stating that there are two paths of social responsibility in accordance with two lines of corporate co-operation with society, namely primary and secondary relations, formulated as follows:⁸

1. Primary relationships, such as fulfilling contracts already made with other companies, keeping promises, paying debts, providing satisfactory customer and customer service, are responsible for offering goods and services to the public in good quality, paying attention to employee rights, employee benefits and his family, improving employee skills and education, and so on.
2. Secondary relations is responsible for operations and business impact on society in general, or social issues such as employment, education, social infrastructure, taxes and so on.

There are two things related to the scope of corporate social responsibility, that is:⁹

1. Internal is the responsibility of the company itself, the Company must be responsible for the welfare of its employees, the quality of materials used to produce good goods or matters relating to the production process.
2. External is the responsibility of the company. The company must be responsible for the environment surrounding the company and its consequences, responsible for goods manufactured (marketed) or post-production.

Internal corporate responsibility is the company's moral responsibility to employees, that is by fostering a good working relationship at various levels of the position from the bottom to the boss. Creating openness, both from corporate regulatory information

⁵ Bismar Nasution, "Pengelolaan Stakeholders Perusahaan", Disampaikan pada Pelatihan Mengelola Stakeholders yang dilaksanakan PT. Perkebunan Nusantara III (Persero) tanggal 17 s.d. Oktober 2008 di Sei Karang Sumatera Utara, hal 4.

⁶ Vernona Musselman dan John H. Jackson, Pengantar Ekonomi Perusahaan, Edisi Kesembilan, Jilid 1, (Jakarta: Erlangga, 1988), hal. 34.

⁷ Basu Swasitha, D. A dan Ibnu Sukotjo W, Pengantar Bisnis Modern, Pengantar Ekonomi Perusahaan Modern, (Yogyakarta: Liberty, 1983), hal. 66.

⁸ A. Sonny Keraf, *Op. Cit.* hal. 97-98.

⁹ Habib Adjie, *Op. Cit.* hal. 68.

issues and related to the progress and decline of the company. Transparency makes it easier to control management functions where employees of all levels can participate in the supervision of the company's operations. It also deals with the disclosure of all company policies. In running the company's wheels internally, there is interaction with parties outside the company (external), such as government, suppliers, and society. Relationships with parties outside the company affect the company's activities.¹⁰

There are several factors that must be considered in running relationships with stakeholders. First, the company must provide true and honest information to investors and also to partners, incorrect information can lead investors in making decisions and provide legal certainty to partners. Second, in the cooperation of both parties must have good content and trust, so that the cooperation can run well and benefit both parties. It can also be interpreted that corporate responsibility to service provider partners must be transparent.

Status of Shared Economy Based Companies in Indonesia

If referring to corporate forms based on the Civil Code (KUHPerdata), KUHD and Company Law, share-based economy companies may be held either in the form of individual companies or companies with legal entities. A quo company such as Gojek, Uber, Traveloka chose a limited liability company as a legal entity.

In Article 79 of Government Regulation (PP) No. 74 of 2014 determines that public transport companies that organize the transport of persons and goods shall take the form of Indonesian legal entities in accordance with the provisions of laws and regulations. Article 79 paragraph (2) of Government Regulation (PP) no 74 of 2014 further explains that Indonesian legal entities which are public transportation companies that organize the transport of persons and or goods shall be in the form of:

- a. State-Owned Enterprises (BUMN)
- b. Regional Owned Enterprises (BUMD)
- c. Limited Liability Company (PT); or
- d. Cooperative

As Article 79 paragraph (2) of Government Regulation (PP) a quo, private Indonesian legal entities that are allowed to become public transport companies are limited to private legal entities in the form of limited liability companies and cooperatives.

In Article 2 UUPT, it is stipulated that the Company must have a purpose and purpose and business activities that are not contradictory to the provisions of laws, public order and/or morals. So as long as the company has good faith and does not contradict the

¹⁰ I. Nyoman Tjager, dkk., Corporate Governance, (Jakarta: PT. Prehalindo, 2003), hal. 146

constitution, the quo company can be considered the same status as a incumbent company.

Since the beginning of 2016, the Government continues to make efforts to simplify business start-up procedures. In addition to the number of entrepreneurs in Indonesia which is still very small compared to neighboring countries, establishing a new business is considered to provide added value as it opens more jobs and drives the local economy. One of the initiatives of the Government is to facilitate the establishment of Limited Liability Company (PT). Here are the procedures and terms of establishment of PT:

1. Capital to establish limited liability company (PT)
2. Business domicile in virtual office
3. Determining business sector according to the latest KBLI year 2015

In determining the field of business, at least the following points should be noted:

- a. Everyone can choose any field of business, except closed and prohibited by the rules.
- b. The selected business field must be included and stated in the deed of establishment of PT.
- c. The business field that is selected will determine the type of business license you need to have.
- d. The chosen business field should be specific and in line with the latest KBLI. If you want to do general trading, you need to specify what commodities to sell, for example for the retail trade in code 4771.
- e. Please note the KBLI code carefully as this will be closely related to business licensing procedures for your business.
- f. KBLI (Standard Classification of Indonesian Business Field) is a classification of economic activity or activity which is a reference for related institutions to see the code of business field that will determine the appropriate type of business license. For general trading business, the code of this business field will be contained in Trading Business License (SIUP). Further business code from your main business will be listed on Company Registration Certificate (TDP).

4. Requirements BPJS Employment To Establish PT
5. NPWP Director and NPWP of the Company
6. SIUP and TDP Online

Given the company's manufacturing procedure above. It can be concluded that the government is actively activating the business actors and giving a great opportunity to everyone to participate in developing the country's economy by actively conducting

business activities. Nor is a company based sharing economy also not escape in it. That is the framework of further improving the development of the national economy and at the same time provide a solid foundation for the business world in facing the development of the world economy and the advancement of science and technology in the era of globalization in the future, need to be supported by a law regulating the limited liability company that can guarantee conducting a conducive business climate.

The uniqueness of the Sharing economy is the presence of a third partner or service provider (provider) who participates in the company's activities. Provider status is not clearly regulated in UUPT so it is feared to create legal uncertainty for providers. In response to this, the a quo company needs to take a progressive step considering that in the UUPT concept, it is explained that a limited liability company as one of the pillars of national economic development needs to be given legal basis to further spur national development arranged as a joint effort based on the principle of kinship.

Reflecting the country that has received this company system, such as Malaysia and Singapore, the business activities of the company's economy is growing rapidly. But that does not mean that the country's youth accept the existence of the company just like that. Malaysia itself enforces strict additional rules specifically addressed to the transportation a quo company, whereby service providers must have a license, either in the form of a driver's license or license from the company itself so that in the event of problems with the consumer, the company may immediately follow up. In addition, the company also requires service providers to have vehicle insurance. Thus, the throwing of responsibility between the company and the service provider can be avoided.

In Indonesia alone, true Gojek, Uber, Grab and many more get a very big opportunity with high market share. The government should look at these opportunities and reflect on the countries that have accepted and allowed the company. Especially if you look at the lifestyle of Indonesian people who prefer to use the means of transportation than on foot. Various sources of statistical data state that the number of vehicle users in Indonesia is increasing. This of course also increases the economic opportunities for companies that should be utilized wisely.

In writing, the sharing economy is not regulated by legislation. But if you look back at the form of property from the company, true the concept of sharing economy is inseparable from the principle of populist economy embraced by the State of Indonesia. The concept of sharing economy is a manifestation of the social soul of a high society and help each other in accordance with the principle of mutual cooperation.

CONCLUSION

The form of legal responsibility of the company sharing economy against the legal consequences that occur with service providers and consumers can be a civil liability or

administrative accountability. In addition, the company sharing economy is given the flexibility to resolve the issue with the providers that are not regulated in the law as a form of enforcement of good corporate principles. The status of the company based on the sharing economy in Indonesia is not clearly regulated in UUPT due to the involvement of the 3rd party. However, it does not mean that the sharing economy company is not accepted in Indonesia where the government keeps granting a business license to the quo company with the quo company's record given the legal basis to further spur national development arranged as a joint effort based on the principle of kinship.

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