



Legal Liability and Parental Duties: Implications for Parent Company Oversight of Subsidiaries

Kasmawati; Hamzah; Sunaryo; I Gede AB Wiranata

Law Faculty, Lampung University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v11i7.5794>

Abstract

This research is normative research, the approach taken includes statutory and conceptual approaches. The type of data used is secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. The collected data is then analyzed by systematizing written legal materials. The result of this analysis is that the parent company's responsibility is only limited to paid-in capital, but the parent company can be held responsible for personal assets if it violates the provisions of Article 3 paragraph 2 of the PT Law.

Keywords: *Legal Liability; Parent Company; Subsidiaries*

Introduction

Talking about a parent company or what is usually called a holding company, it is a company whose main activity is to invest in subsidiaries and then supervise the management activities of the subsidiaries. So it can be stated that the parent company has the authority to become the central leader who controls and coordinates the subsidiaries in an economic unit. This central leadership represents a possibility of exercising decisive rights or influence. The exercise of influence within a group company can reduce and/or dominate the rights of other companies.¹

The parent company acts as a central leader, directing business activities of Group Company members to support interests Group Companies as an economic unit. There is a link between the parent company and the subsidiary companies (subsidiary) in the construction of a group company (holding company) based on majority share ownership of the parent company, so that the company The parent company becomes the central leader who has the ultimate power acts to coordinate and control internal

¹ Carol Rosalyn Manoi dan Rio Christiawan, "KEDUDUKAN DAN TANGGUNG JAWAB PERUSAHAAN INDUK/HOLDING COMPANY ATAS KERUGIAN PADA ANAK PERUSAHAAN BUMN," *JURNAL HUKUM STAATRECHTS* 6, no. 1 (2023): 63–79.

subsidiary companies one management unit for the creation of the collective goals of the group/holding company company).²

The parent company has the authority to become the central leader who controls and coordinates its subsidiaries in an economic unit. This central leadership represents a possibility of exercising decisive rights or influence. The exercise of influence within a group company can reduce and/or dominate the rights of other companies.

Third parties who have legal relations with subsidiaries cannot involve the parent company in taking responsibility because the principle of limited liability and separation of responsibility (separate legal entity) applies. Apart from that, the legal person principle is also known, which means that subsidiaries have juridical independence. to carry out its own legal actions, so that the parent company is not responsible for the legal actions of its subsidiaries. In practice, the parent company uses an operating holding company system, which means that the parent company not only invests capital but also carries out business activities or controls subsidiaries.³

The formation of holding companies and subsidiaries caused new legal problems because they were not accompanied by developments in regulations regarding the form of companies, especially those in the form of companies. The regulation of holding companies is still bound by the basic rules in the Commercial Code and other laws and regulations relating to companies, both legal entities and non-legal entities, which are intended to regulate single companies, so that currently parent and subsidiary companies are still considered separate independent entities.⁴

The legal relationship that arises between a parent company and a subsidiary is a relationship between shareholders and the company. These legal relationships are clearly regulated in the articles of association and bylaws in accordance with applicable regulations. The parent company also has articles of association and bylaws like an ordinary Limited Liability Company. In this way, the parent company's role as supervisor of its subsidiaries is limited to shareholders as regulated in the articles of association and bylaws.⁵

In this article we will discuss more clearly Legal Obligations and Responsibilities of Parents: Implications for Parent Company Supervision of Subsidiaries. To discuss the formulation of the problem above and so that it can be scientifically justified, this research uses a normative legal research method (library method). Normative legal research only manages and uses related secondary data. Secondary legal materials are all information documents or study results such as legal journals, newspapers and scientific writings related to the subject matter being researched.

Discussion

Judicial recognition of the parent and subsidiary companies as independent legal subjects gives the parent and subsidiary the right to carry out their own legal actions, but in fact the control of the parent company over the subsidiary company is a result of the business reality of the group company which is managed as an economic unit. Control of the parent company over the subsidiary company in the construction of the group company gives rise to duality in the subsidiary company, namely as an independent legal entity and a business entity that is subject to the control of the parent company. The fact

² Andyna Susiawati Achmad dan Astrid Athina Indradewi, "Hubungan Hukum Antar Perusahaan Dalam Sistem Perusahaan Grup Ditinjau Dari Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas," *Jurnal USM Law Review* 4, no. 2 (2021): 470–83.

³ Sigit Somadiyono, "Kedudukan hukum anak perusahaan badan usaha milik daerah," *Wajah Hukum* 5, no. 1 (2021): 403–8.

⁴ Wahyu Syuhada, "Analisis Hukum Perusahaan Pada Kasus Kepailitan Anak Perusahaan Badan Usaha Milik Negara (Holding Company)," *UNES Law Review* 5, no. 4 (2023): 2352–68.

⁵ Siti Bianca Zahara dan Heru Pringgodani Sanusi, "Tanggung Jawab Perusahaan Induk Lion Group Terhadap Praktik Diskriminasi Penjualan Kapasitas Kargo," *Reformasi Hukum Trisakti* 4, no. 1 (2022): 173–80.

of parent control over a subsidiary from the business reality of a group company does not eliminate the juridical recognition of a subsidiary legal entity as an independent legal subject, on the contrary, the management of a subsidiary cannot be separated from the fact of parent control over a subsidiary from the business reality of a group company carried out in one economic unit. Parent control over subsidiaries in the form of policies or instructions affects the degree of independence of subsidiaries not to carry out policies and/or instructions from the parent company.⁶

The parent company as the controller of the subsidiary company can be held criminally liable based on the doctrine of vicarious liability in terms of the criminal liability of the subsidiary company in the event of an environmental crime. A parent company that can be held criminally responsible for environmental crimes committed by its subsidiary company is a parent company that directly controls the subsidiary company and also actively participates in carrying out the subsidiary company's business activities. This control model is called an operating holding company. In an operating holding company, the parent company carries out business activities or controls its subsidiary companies, and in achieving its goals, the parent company can determine policies which will then be implemented by the subsidiary company.⁷

Article 116 of Law No. 32 of 2009 UUPPLH regulates criminal liability in the event that criminal acts are committed by, for and on behalf of business entities. In relation to criminal responsibility, it must first be clear about who can be held criminally responsible. This means that it must first be ascertained who is declared to be the perpetrator of the criminal act. This means that it must first be determined who is declared to be the perpetrator of the criminal act. Regarding who is declared to be the perpetrator of the criminal act. Criminal law (the subject of a criminal act) has generally been formulated by legislators.⁸

The parent company and subsidiaries both have legal entities, so limited rights and obligations apply in the field of assets (limited liability). The principle of limited liability regarding separate assets means that the assets of shareholders and the assets of legal entities are completely separate. If a legal entity has debt, then shareholders cannot be held responsible for paying the legal entity's debt, and vice versa. Apart from that, the losses borne by shareholders are limited to the capital paid into the Company.⁹

Article 40 paragraph (2) of the Commercial Code (KUHD) states that shareholders are not liable for more than the full amount of the shares. The same principle is also applied in Article 3 paragraph (1) of the PT Law which states emphatically that a Limited Liability Company is a legal entity and its responsibility is only limited to the shares that have been taken by the shareholders.

A parent company that can be held criminally responsible for environmental crimes committed by its subsidiary company is a parent company that directly controls the subsidiary company and also actively participates in carrying out the subsidiary company's business activities. This control model is called an operating holding company. In an operating holding company, the parent company carries out business activities or controls its subsidiary companies, and in achieving its goals, the parent company can determine policies which will then be implemented by the subsidiary company.¹⁰

In corporate law, piercing the corporate veil is defined as a process of placing responsibility on other people's shoulders for a legal action carried out by the perpetrator company, without looking at the

⁶ Herlina Manullang, "Meminta Pertanggungjawaban Pidana Perusahaan Induk Atas Perbuatan Tindak Pidana Lingkungan Hidup Yang Dilakukan oleh Anak Perusahaan," *Jurnal Hukum Samudra Keadilan* 15, no. 1 (2020): 112–25.

⁷ Resta Mario, "TANGGUNG JAWAB HOLDING COMPANY ATAS KERUGIAN PIHAK KETIGA AKIBAT PERBUATAN HUKUM ANAK PERUSAHAAN," 2023.

⁸ Nanda Ayu Cahyanti, Rahma Dwi Pangastuti, dan Sumriyah Sumriyah, "Pertanggungjawaban Holding Company Terhadap Anak Perusahaan," *Jurnal Hukum Dan Sosial Politik* 1, no. 2 (2023): 68–77.

⁹ Tina Amelia, "Tanggung Jawab Terbatas Induk Perusahaan Bumn Terhadap Anak Perusahaan Bumn Pra Dan Pasca Putusan Mahkamah Konstitusi Nomor 01/PHPU-Pres/XVII/2019 Tahun 2019," *Sol Justicia* 3, no. 2 (2020): 113–31.

¹⁰ Nelson Jati Hamonangan Sihite, "Tanggung Jawab Perdata Bagi Direksi Perseroan Terbatas Pada Anak Perusahaan Dalam Holding Company Perusahaan Perkebunan Badan Usaha Milik Negara," vol. 1, 2023, 187–92.

fact that the action was actually carried out by the perpetrator company. The application of this principle has the main mission of achieving justice, especially for minority shareholders and third parties who have certain relationships with the company.¹¹

The universal basic criteria for piercing the corporate veil to be legally imposed are:¹²

1. Fraud occurs;
2. injustice occurs;
3. There is oppression;
4. Does not fulfill legal elements (illegality);
5. Excessive shareholder dominance; and
6. The company is the alter ego of the majority shareholder.

Because the parent company holds a central position in the company's decision-making structure, the parent company has the right to supervise and provide instructions to the subsidiary company. The linkage between parent and subsidiary companies in the construction of a group company can also be caused by several other things, namely, general meeting of shareholders (GMS), placement of directors or commissioners in subsidiaries, linkage through voting rights agreements, and linkage through contracts.¹³

The existence of a holding company has advantages and disadvantages. Among the advantages of a holding company in a group company are the following: ¹⁴

- a. Risk independence
- b. Greater supervisory rights
- c. Easier and more effective control
- d. More efficient operations
- e. Ease of capital sources
- f. The accuracy of the decisions taken.

Apart from the advantages of having a holding company in a group company, there are also disadvantages, including:

- a. Double taxation
- b. Management one man show
- c. Game conglomerate
- d. Business closure
- e. Business risk

Variations in legal relationships between holding companies and subsidiaries can also be seen from the classification of holding companies using various criteria in the form of a review of their involvement in business, involvement in decision making, and involvement in equity, as follows:

- a. Viewed from the perspective of the holding company's involvement in business
 - 1) A mere holding company, this type of holding company does not conduct its own business in practice, it is intended only to hold shares and control its subsidiaries, nothing more than that.
 - 2) A holding company operates. This type of holding company, apart from holding shares and controlling subsidiaries, also carries out its own business.

¹¹ Sofiatul Istiqomah, "Tanggung Jawab Holding Company Terhadap Anak Perusahaan yang Pailit," 2021.

¹² ADE MAZHAR AMIN BAHRI, "Tanggung Jawab Induk Perusahaan Sebagai Pemegang Saham Mayoritas Pada Suatu Anak Perusahaan Di Tinjau Dari Konsep Penataan Kembali Hutang Perusahaan (Corporation Debt Restructuring)," 2021.

¹³ Andwia Maharani dan Elisatris Gultom, "Tinjauan Yuridis Terhadap Tanggung Jawab Atas Tindakan Hukum Anak Perusahaan Yang Merugikan Pihak Ketiga Oleh Induk Perusahaan Holding BUMN," *Hakim 2*, no. 1 (2024): 262–77.

¹⁴ Maharani dan Gultom.

b. Judging from involvement in decision making

- 1) Investment holding companies, own shares in subsidiaries solely for investment purposes, without the need to interfere with subsidiary management.
- 2) The management holding company is not only a passive shareholder, but also intervenes or at least monitors the business decision making of the subsidiary.

c. Viewed from the perspective of equity involvement

- 1) Affiliate holding company, is a holding company that owns shares in a subsidiary of less than 51% of the subsidiary's shares.
- 2) A subsidiary holding company is a holding company that owns shares in a subsidiary of up to 51% or more.
- 3) Non-competitive holding company is any holding company that owns shares of less than 51%, but is not competitive compared to other shareholders.
- 4) A combination holding company is a holding company that has shares in several subsidiaries at once, where some hold shares of up to 51% or more, and some hold less than 51% competitive or non-competitive.

From the explanation regarding the relationship between parent and subsidiary companies above, it can be seen that the parent company holds great authority and greatly influences the running of the subsidiary, therefore it is natural that the parent company also holds responsibility if decisions made by the parent company are detrimental to the subsidiary. This is very natural when you see how much influence the parent company has on the management and business direction of the subsidiary in question.

Due to the magnitude of this influence, in principle the parent company can be subject to legal responsibility as a result of the parent company's domination over the management of subsidiaries that carry out the parent company's instructions, because a PT should ideally grow through its operational activities. From this perspective, the actions of the parent company are not necessarily in line with the growth of the subsidiary. In addition, subsidiary directors should carry out their mandate in the interests of the PT and not solely in the interests of shareholders. So, if the legal relationship carried out by a subsidiary is based on the wishes or even decisions of the parent company, the parent company must also be responsible if legal problems occur.

From the explanation above, an understanding can be drawn that the parent company is a separate legal entity, where the parent company is the central leader over the subsidiaries under it. However, in practice the parent company cannot be separated from the company under it, because many matters relating to the management and investment direction of the subsidiary require permission to mean active participation from the parent company. So that the parent company can be declared as the actual controller of the subsidiary.

The legal relationship that arises between a parent company and its subsidiaries is a relationship between shareholders (parent company) and subsidiaries. This legal relationship is clearly regulated in the notarial deed of establishment of the subsidiary. Apart from the notarial deed, the legal relationship between the parent company and the subsidiary is also confirmed in the subsidiary's articles of association, taking into account the applicable provisions. For example, for a subsidiary to be able to take certain legal actions, it must obtain approval from the General Meeting of Shareholders (including the parent company as the majority shareholder).

These specific actions include: participation at another company, receiving a loan or providing a loan in other companies, enter into agreements with third parties. All subsidiary legal actions related to the articles of association must obtain approval from the shareholders (parent company).

Therefore, the organization and management of the parent company are regulated as in the case of an ordinary Limited Liability Company, namely in the articles of association of the parent company. The parent company supervises the subsidiary to the extent of its position as a shareholder and to the extent regulated in the subsidiary's articles of association.

The relationship between the parent company and its subsidiaries can originate from several aspects, namely:¹⁵

- a. Parent Company Ownership of Subsidiary Shares
- b. General Meeting of Shareholders (GMS)
- c. Placement of Members of the Board of Directors and/or Board of Commissioners of Subsidiaries
- d. Linkage through Voting Rights Agreement
- e. Linkage through Contracts

In the explanation of Article 29 of Law No. 1 of 1995, a subsidiary is a company that has a special relationship with another company which can occur because:

- a. More than 50% of the shares are owned by the holding company;
- b. More than 50% of the votes at the GMS are controlled by the parent company;
- c. Control over the running of the company, the appointment and dismissal of directors and commissioners is greatly influenced by the parent company.

As a shareholder in a subsidiary company, the parent company is legally considered to have the highest power, the mechanism of which can be exercised through a GMS (ordinary or extraordinary). Consequently, the holding company has veto rights, veto rights apply if:

- a. The parent company holds shares in such a number that it always meets the quorum of the General Meeting of Shareholders and/or can make its own decisions based on the majority of votes as intended in the company's articles of association.
- b. Can influence his partners/partners, namely other shareholders, to side with him in terms of voting.
- c. Even though the parent company, for example, holds minority shares, the articles of association, for example, give it veto rights. Law on Limited Liability Companies, Law no. 40 of 2007 does not expressly prohibit or justify granting "veto rights" to one or several particular shareholders. What is clear, according to Article 87 paragraph (2) of the Law on Limited Liability Companies, is that it is not possible for a General Meeting of Shareholders to make a decision if the votes in favor are less than a simple majority, but if the use of a kind of veto to maintain the status quo is indeed possible by This article is through voting using the super majority principle. This is either determined in the articles of association based on the possibilities provided by Article 87 paragraph (2), or on matters that the PT Law has determined for the special quorum.

Based on Article 3 paragraph 1 of the PT Law: the parent company, in this case as a shareholder, receives protection in the form of limited liability. That is, the parent company can only be held liable on a limited basis to the extent of the shares it owns in a subsidiary company.

There are three purposes for limited liability for shareholders. First, limited liability aims to protect shareholders from larger losses beyond what they have invested. Second, shareholders are able to transfer the risk of potential business failure to the company's creditors. Third, to encourage investment and facilitate company capital accumulation.

The implication is that the legal principle of limited liability applies. This principle protects the parent company as shareholder of a subsidiary company from being liable only to the value of the shares

¹⁵ Manullang, "Meminta Pertanggungjawaban Pidana Perusahaan Induk Atas Perbuatan Tindak Pidana Lingkungan Hidup Yang Dilakukan oleh Anak Perusahaan."

in the subsidiary company for the subsidiary's inability to resolve legal responsibilities to third parties consisting of minority shareholders, employees and creditors as a result of the subsidiary carrying out instructions from parent company.

Conclusion

The responsibility of the parent company towards its subsidiaries can be seen from the provisions of Article 3 Paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies which explains that shareholders are responsible for the company to the extent of their shares, which means that shareholders are only responsible for the extent of their shares, if the company have legal problems. However, the parent company can be held accountable in accordance with the principle of separate legal personality.

Referencess

- Achmad, Andyna Susiawati, dan Astrid Athina Indradewi. "Hubungan Hukum Antar Perusahaan Dalam Sistem Perusahaan Grup Ditinjau Dari Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas." *Jurnal USM Law Review* 4, no. 2 (2021): 470–83.
- Amelia, Tina. "Tanggung Jawab Terbatas Induk Perusahaan Bumn Terhadap Anak Perusahaan Bumn Pra Dan Pasca Putusan Mahkamah Konstitusi Nomor 01/PHPU-Pres/XVII/2019 Tahun 2019." *Sol Justicia* 3, no. 2 (2020): 113–31.
- BAHRI, ADE MAZHAR AMIN. "Tanggung Jawab Induk Perusahaan Sebagai Pemegang Saham Mayoritas Pada Suatu Anak Perusahaan Di Tinjau Dari Konsep Penataan Kembali Hutang Perusahaan (Corporation Debt Restructuring)," (2021).
- Cahyanti, Nanda Ayu, Rahma Dwi Pangastuti, dan Sumriyah Sumriyah. "Pertanggungjawaban Holding Company Terhadap Anak Perusahaan." *Jurnal Hukum Dan Sosial Politik* 1, no. 2 (2023): 68–77.
- Istiqomah, Sofiatul. "Tanggung Jawab Holding Company Terhadap Anak Perusahaan yang Pailit," (2021).
- Maharani, Andwia, dan Elisatris Gultom. "Tinjauan Yuridis Terhadap Tanggung Jawab Atas Tindakan Hukum Anak Perusahaan Yang Merugikan Pihak Ketiga Oleh Induk Perusahaan Holding BUMN." *Hakim* 2, no. 1 (2024): 262–77.
- Manoi, Carol Rosalyn, dan Rio Christiawan. "KEDUDUKAN DAN TANGGUNG JAWAB PERUSAHAAN INDUK/HOLDING COMPANY ATAS KERUGIAN PADA ANAK PERUSAHAAN BUMN." *JURNAL HUKUM STAATRECHTS* 6, no. 1 (2023): 63–79.
- Manullang, Herlina. "Meminta Pertanggungjawaban Pidana Perusahaan Induk Atas Perbuatan Tindak Pidana Lingkungan Hidup Yang Dilakukan oleh Anak Perusahaan." *Jurnal Hukum Samudra Keadilan* 15, no. 1 (2020): 112–25.
- Mario, Resta. "TANGGUNG JAWAB HOLDING COMPANY ATAS KERUGIAN PIHAK KETIGA AKIBAT PERBUATAN HUKUM ANAK PERUSAHAAN," (2023).
- Sihite, Nelson Jati Hamonangan. "Tanggung Jawab Perdata Bagi Direksi Perseroan Terbatas Pada Anak Perusahaan Dalam Holding Company Perusahaan Perkebunan Badan Usaha Milik Negara," 1:187–92, (2023).

- Somadiyono, Sigit. “Kedudukan hukum anak perusahaan badan usaha milik daerah.” *Wajah Hukum* 5, no. 1 (2021): 403–8.
- Syhada, Wahyu. “Analisis Hukum Perusahaan Pada Kasus Kepailitan Anak Perusahaan Badan Usaha Milik Negara (Holding Company).” *UNES Law Review* 5, no. 4 (2023): 2352–68.
- Zahara, Siti Bianca, dan Heru Pringgodani Sanusi. “Tanggung Jawab Perusahaan Induk Lion Group Terhadap Praktik Diskriminasi Penjualan Kapasitas Kargo.” *Reformasi Hukum Trisakti* 4, no. 1 (2022): 173–80.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).