

EKSISTENSI PERSEROAN PERORANGAN DAN TANGGUNG JAWABNYA TERHADAP PIHAK KREDITUR MENURUT HUKUM PERSEROAN

Oleh:

Muhammad Iqbal Azis¹, Hariyanto²

INTISARI

Penelitian ini bertujuan untuk menganalisis koherensi prinsip-prinsip hukum Perseroan dengan eksistensi Perseroan Perorangan yang telah diatur dalam Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja (Perpu Cipta Kerja) dan menganalisis tanggung jawab pemegang saham Perseroan Perorangan serta implikasinya terhadap perlindungan hukum bagi *stakeholder* Perseroan utamanya kepada pihak kreditur.

Penelitian ini merupakan jenis penelitian yuridis normatif, yaitu penelitian yang dilakukan dengan mengkaji data sekunder yang diperoleh dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Analisis data pada penelitian ini dilakukan dengan pendekatan kualitatif dan hasil yang diperoleh disajikan secara deskriptif analitis.

Hasil penelitian ini menunjukkan bahwa keberadaan Perseroan Perorangan tidak koheren dengan beberapa prinsip-prinsip hukum Perseroan. *Pertama*, Perseroan Perorangan sebagai badan hukum tidak koheren dengan prinsip Perseroan sebagai badan hukum sebagaimana dipahami dalam doktrin. *Kedua*, Pendirian Perseroan Perorangan tidak lagi mengikuti prinsip atau paham perjanjian, melainkan mengikuti paham institusi. *Ketiga*, konsep Perseroan Perorangan tidak koheren dengan prinsip Perseroan sebagai persekutuan modal. *Keempat*, prinsip pengurusan oleh suatu organ pada Perseroan Perorangan tidak lagi bersifat *two-tier board system*, melainkan bersifat *one-tier board system*. Kemudian tanggung jawab pemegang saham Perseroan Perorangan dan implikasinya terhadap perlindungan hukum bagi pihak kreditur adalah: *Pertama*, tanggung jawab pemegang saham bersifat terbatas; *kedua*, tanggung jawab terbatas pemegang saham Perseroan Perorangan dapat dikesampingkan melalui doktrin '*piercing the corporate veil*'; *ketiga*, tanggung jawab terbatas pemegang saham Perseroan Perorangan berimplikasi terhadap perlindungan hukum bagi pihak kreditur karena sulitnya penerapan *doktrin piercing the corporate veil* sesuai alasan-alasan yang ditentukan dalam Perpu Cipta Kerja.

Kata Kunci: Perseroan Perorangan, Tanggung Jawab, Pelindungan Hukum, Kreditur

¹ Mahasiswa Magister Hukum Bisnis, Universitas Gadjah Mada (UGM) Yogyakarta

² Dosen Hukum Bisnis, Fakultas Hukum Universitas Gadjah Mada (UGM) Yogyakarta

EKSISTENCE OF SINGLE MEMBER COMPANY AND RESPONSIBILITY TO CREDITOR ACCORDING TO COMPANY LAW

Oleh:

Muhammad Iqbal Azis¹, Hariyanto²

ABSTRACT

This research aims to analyze the coherence of the legal principles of the Company with the existence of the Single Member Company which has been regulated in Government Regulation In Lieu Of Law Number 2 Year 2022 concerning Job Creation (Perppu of Job Creation) and analyze the responsibility of the shareholder of the Single Member Company and its implications for legal protection for the Company's stakeholders, especially to the creditor.

This research is a normative juridical research, namely research conducted by examining secondary data derived from primary legal materials, secondary legal materials, and tertiary legal materials. The data in this research was analyzed by a qualitative method and the results were presented analytical descriptive.

The results of this research show that the existence of Single Member Company is not coherent with the legal principles of the Company. First, the Single Member Company as a legal entity is not coherent with the principles of the Company as a legal entity as understood in the doctrine. Second, the establishment of Single Member Company no longer based on agreement, but follows the institutional theory. Third, the concept of Single Member Company is not coherent with the principle of the company as a capital partnership. Fourth, the principle of management by an organ of Single Member Company is no longer a two-tier board system, but one-tier board system. Then, the responsibilities of shareholder and their implications toward legal protection for creditors are: First, the liability of shareholders is limited; secondly, doctrine of 'piercing the corporate veil' can be applied to the limited liability of individual shareholder; third, the limited liability of individual shareholder has implications toward legal protection for creditors due to the difficulty of applying the doctrine of 'piercing the corporate veil' which based on the reasons according to Perppu of Job Creation.

Keywords: Single Member Company, Liability, Legal Protection, Creditor

¹ Student of Master of Business Law, Gadjah Mada University (UGM) Yogyakarta

² Lecturer of Business Law, Faculty of Law, Gadjah Mada University (UGM) Yogyakarta