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Accountability of Shell Company's Practices in Tax Law Perspective by Limited Liability Companies: A Review of Good Corporate Governance

Jessica Ariana Hutagaol[1)] **& M. Rizki Yudha Prawira**[2)]
[1)]Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia, E-mail: 2210611266@mahasiswa.upnvj.ac.id
[2)]Universitas Pembangunan Nasional "Veteran" Jakarta, Indonesia, E-mail: rizkiyudha@upnvj.ac.id

Abstract. *The use of shell companies by limited liability companies as a means of tax avoidance demonstrates a legal abuse that impacts the dilemma of legal compliance and business ethics. This action raises questions regarding the implementation of good corporate governance, which should be the basic ethics of every company. This study used a normative juridical method through a statutory approach and a conceptual approach. This study utilizes primary, secondary, and tertiary legal materials and then examines them descriptively. The results of the study indicate that the use of shell companies for tax avoidance purposes is contrary to the principles of good corporate governance. This scheme in practice can be subject to tax and criminal sanctions in its accountability.*

Keywords: *Company; Legal; Tax.*

1. Introduction

A Limited Liability Company or PT is a legal entity established based on an agreement to carry out business activities through authorized capital divided into shares (Nurnaningsih, R., & Solihin, D., 2020). Shareholders generally hold a General Meeting of Shareholders (GMS) to evaluate the company's annual report or make important decisions (Adipratama, AANBW, 2022). These interests are regulated in Law No. 6 of 2023 concerning the Establishment of Government Regulations (Job Creation Law) (Yundira, I., & Tiopan, D., 2023). As a legal entity, a Limited Liability Company has the authority to conduct commercial activities. This includes entering into agreements or contracts and owning assets that are clearly separate from the assets of its shareholders.

Every limited liability company is fundamentally obligated to fulfill its tax obligations as a form of contribution to the state. One of the country's primary sources of revenue is taxes, which are used to finance development and provide public services to the community. However, many companies attempt to minimize their tax burden through various tax planning strategies. Some of these strategies are legally valid, but others are extensive and exploit legal loopholes. This phenomenon raises questions about the clear line between tax compliance strategies and the illegal practice of tax avoidance (Cahyo, Fandi Dwi, 2023). Many companies, including Limited Liability Companies, seek to reduce their tax burden by both legal and unethical means.

One of the methods frequently used in tax avoidance practices is the use of shell companies, namely companies that are legally registered but have no real economic activity. Shell companies are often used to disguise the actual control and ownership of assets or business activities, thus opening up opportunities for tax avoidance in a non-transparent manner. In Indonesia, the existence of shell companies is recognized through the term Special Purpose Vehicle (SPV). This is written in Article 2 Paragraph (4) of the Minister of Finance Regulation Number 127/PMK.010/2016 concerning Tax Amnesty Based on Law No. 11 of 2016 concerning Tax Amnesty for Taxpayers Who Have Indirect Assets. Special Purpose Vehicles are explained in Article 2 Paragraph (3) which states that the company in question is established only to carry out certain special functions for personal interests. The special functions in question are such as purchasing or financing investments, and there are no active business activities.

Real practice examples *tax avoidance,* it incentives in Indonesia occurred during the 2020–2021 period, when several property and real estate companies listed on the Indonesia Stock Exchange took advantage of the government's tax incentive program during the COVID-19 pandemic. The incentives, intended to alleviate the economic burden, were instead exploited by some companies to implement tax planning strategies that led to tax avoidance. The study found that of the 39 companies analyzed, share ownership significantly influenced tax avoidance. However, other aspects, such as profit level and asset intensity, showed no effect on tax avoidance success. This suggests that even when companies record profits or have substantial assets, the decision to avoid taxes is largely determined by ownership structure and the influence of internal or external controllers. These findings confirm that tax avoidance strategies are not solely driven by economic pressures but are also closely related to internal governance and managerial control, which should be a concern within the framework of good corporate governance (Pradana, FA, & Wulandari, S., 2023).

Good corporate governance, this is regulated by one of the corporate governance principles, the G20/OECD Principles of Corporate Governance. These corporate governance principles are a set of guidelines established and developed by the Group of Twenty (G20) and the Organization for Economic Co-operation and Development (OECD). These principles serve as a standard for good governance stability and are benchmarked internationally, including in Indonesia (Utama, S., Amarullah, 2023). Good corporate governance in Indonesia is implicitly regulated in Law No. 40 of 2007 concerning Limited Liability Companies (UU PT). This law governs the principles of a company, specifically a limited liability company, if it commits violations or other risky actions. One such action is tax avoidance.

When good corporate governance principles are integrated with audits and taxpayer compliance, the implemented tax policies will be more orderly, ethical, and sustainable. Therefore, substantial good corporate governance is a crucial foundation for creating a fair tax system that is resilient to legal abuses such as shell companies. This phenomenon raises fundamental questions regarding the mechanisms used and the legal implications for the national tax system. This demonstrates a gap between increasingly complex business practices and existing legal instruments, particularly in detecting and controlling legal abuses such as shell companies (Mangoting, Y., 2023).

Previous research has been conducted. The first was conducted by Rachyu Purbowati in 2021, entitled "The Effect of Good Corporate Governance on Tax Avoidance." The study focused on the influence of the board of commissioners, institutional and managerial ownership, and audit committees on tax avoidance practices in manufacturing companies in Indonesia. The results showed that almost all of these aspects had no significant impact on tax avoidance, indicating that the implementation of good corporate governance through proxies such as the board of commissioners, institutional and managerial ownership, and audit committees remains ineffective as a tax oversight instrument. Furthermore, research conducted by Budi Chandra in 2021, in his article entitled "Efforts to Practice Good Corporate Governance in Tax Avoidance in Indonesia," focused on the weak implementation of good corporate governance principles, particularly in terms of transparency and accountability, which actually opens up loopholes for companies to circumvent tax obligations legally but unethically. Furthermore, there is research conducted by Edi Rudianto in 2025 entitled "Analysis of Income Tax Regulations in Shell Companies from a Legal Certainty Perspective." This research discusses how the establishment of shell companies is exploited to reduce tax burdens through formal, legal schemes, but contrary to tax law fairness. The research highlights the need for strengthening and ensuring legal certainty in tax regulations through regulatory harmonization and the application of the principle of recognizing beneficial ownership, in order to close legal loopholes that companies exploit in tax avoidance practices through the abuse of shell companies.

The principles of good corporate governance, which should serve as a foundation for preventing manipulative behavior, in practice remain merely formalities. These principles should also be examined to determine whether they are integrated with tax law. Therefore, this paper is expected to contribute to academic research in formulating corporate governance principles and legal accountability for the use of shell companies for tax avoidance. This discussion focuses on examining the relationship between good corporate governance principles and corporate control structures. Furthermore, this paper examines the existing legal system's ability to address the challenges of legal engineering-based tax avoidance within Indonesian Limited Liability Companies.

2. Research Methods

This research uses a normative juridical method, by examining laws and regulations, official documents, and relevant literature. This type of research aims to assess the validity, relevance, and legal gaps related to the phenomenon under study. The approaches used are the statute approach and the conceptual approach. Data sources in this study consist of secondary data consisting of primary legal materials, such as Law No. 40 of 2007 concerning Limited Liability Companies (PT Law) and Law No. 11 of 2016 concerning Tax Amnesty. Secondary legal materials include research journals and scientific articles, and tertiary legal materials such as mass media. Data collection techniques are carried out through descriptive library research by referring to books, journals, laws, and other applicable regulations. The collected data are analyzed using descriptive analysis techniques to explain the phenomenon systematically, factually, and accurately without going through hypothesis testing.

3. Result and Discussion

3.1. How are good corporate governance and tax law regulations in Indonesia related to tax avoidance violations in shell company practices by limited liability companies?

The tax avoidance mechanism through shell companies often involves establishing a nominee company that is legally separate but fully controlled by the same party as the main company. This company is used to conduct fictitious transactions, such as the purchase of non-existent services or goods, or the expenditure of management and consulting fees without evidence of actual activity. This practice is often complemented by dummy directors or commissioners, individuals who are not actually involved in operations and are used only to disguise control. Another frequently used method is over-invoicing, which involves exploiting vendors or customers of the parent company. Furthermore, the flow of funds under the same control is often disguised as loans, fees, or debt payments, which aims to shift profits to avoid taxation.

Shell company practices are considered unethical from a legal and business perspective because they violate ethical and legally recognized tax avoidance provisions. Although Article 18 of Law No. 6 of 2008 concerning Income Tax (PPh Law) grants the tax authority the authority to ignore related party transactions in determining tax rates. The related party refers to the ownership and control relationships between companies that typically bind corporations. This authority contradicts the principle of substance over form. This is reinforced in Government Regulation Number 55 of 2022, which stipulates that the Directorate General of Taxes must base tax rates on substance over form. These two regulations create a conflicting impression between the law and its implementation, particularly when the authority to determine taxes is not exercised in accordance with the principle of substance over form.

The use of shell companies not only poses legal risks for companies but also reflects the weak implementation of good corporate governance principles. The substance of good corporate governance principles is implicitly regulated in Articles 92 to 114 of the Limited Liability Company Law. These principles serve as a corporate regulatory and control system that guides transparent, accountable, and responsible business governance, including tax planning and management practices. Strong implementation of good corporate governance encompasses corporate structure, regulations, and compliance with the laws of the country in which the company is incorporated.

Good corporate governance plays a crucial role as an ethical benchmark that prevents the abuse of legal loopholes for unilateral gain and encourages compliance with legal norms. Companies that internalize the principles of good corporate governance tend to avoid manipulative schemes that could potentially damage their reputation and public trust. This is also stipulated in the G20/OECD Principles of Corporate Governance, a set of international principles developed by the Organization for Economic Co-operation and Development. These standards apply to G20 member countries and aim to provide global standards for corporate governance.

The implementation of the five elements of good corporate governance is a crucial pillar in preventing manipulative practices such as tax avoidance through the use of shell companies. First, the principle of transparency requires companies to provide clear, accurate, and publicly accessible information. This eliminates the possibility of concealing ownership or fictitious transactions. Second, the principle of accountability emphasizes the obligation of directors and commissioners to be accountable for every company decision and policy. This obligation aligns with the company's interests and prevents abuse of authority. Third, the principle of responsibility emphasizes that all business activities must comply with laws and regulations and business ethics. This compliance aims to prevent unethical tax avoidance practices. Fourth, the principle of independence requires companies to be free from the domination of certain parties. Examples of such parties include shareholders and other parties who could potentially abuse the company for personal gain. Finally, fairness ensures that all stakeholders receive fair treatment (Firdaus, A., 2022).

The opposite principle of good corporate governance to this practice is transparency. One method, however, involves the use of fictitious individuals, whose names are merely listed in the company's charter (Njatrijani, R., 2019). There is not a single company activity as referred to in Article 75 of the PT Law regarding the General Meeting of Shareholders, including the authority of each position and its work practices. In Article 66 Paragraph (2) of the PT Law, the company is required to submit an annual report. This includes financial reports, activity reports, reports on the implementation of social and environmental responsibilities, and reports on the supervisory duties of commissioners. It is concluded that the principle of transparency is legally real as written in Article 8 Paragraph (2) of the PT Law, even though it is not implemented in practice.

Accountability, in this case, regulates the directors' responsibility for their actions. This includes good internal management, a clear organizational structure, and compliance with the law (Ali, H., & Saputra, F., 2023). As stipulated in Article 97 Paragraph (1) of the Limited Liability Company Law, directors must exercise their official authority in accordance with the intent, purpose, and interests of the company as appropriate. The purpose of the company itself is to carry out business activities with capital consisting of shares. Business activities in this case must be in accordance with existing legal principles (Sinaga, NA, 2018). This tax avoidance practice through shell companies fails to adhere to the principle of accountability due to the lack of internal oversight and management by the board of directors. Furthermore, there is no clear organizational structure in the actual business. This is because the names of the board of commissioners and directors are merely legal documents and have no actual business activities.

This action also contradicts the principle of responsibility. The principle of responsibility in good corporate governance requires companies to comply with all regulatory provisions and carry out their business activities responsibly. Article 74 of the Limited Liability Company Law stipulates that companies are required to be profit-oriented and also to maintain business sustainability.

This sustainability encompasses the interests of the state, employees, and the community. Furthermore, Article 92 Paragraph (1) of the Limited Liability Company Law stipulates that directors are required to manage the company for the interests and objectives of the company and in accordance with statutory provisions. Therefore, this action cannot be profit-oriented without complying with the law and the public interest. In the practice of tax avoidance through shell companies, this principle is ignored because the business activities carried out are not real and only serve as a means of avoiding tax obligations. As a result, the company does not fulfill its responsibility to the state in the form of tax revenue that should be paid.

Furthermore, this action is also inconsistent with the principle of independence. The principle of independence demands that a company be managed without intervention or domination from certain parties with personal interests. In the practice of shell companies, independence is not implemented because the company's existence is merely a legal formality controlled by the owner or certain parties for tax avoidance purposes. This principle of independence is written in Article 108 Paragraph (1) of the PT Law which regulates the obligation of commissioners to carry out independent supervision of the company's management policies and operations. Consequently, if the principle of independence is not implemented, the company does not have the authority to carry out business activities. The company only becomes a tool for personal interests.

The principles of equality and fairness are also at odds in this action. This principle demands that every shareholder and employee receive fair treatment in accordance with their rights and obligations. The principle of fairness in shell company practices is neglected because the interests of the board of commissioners and employees as beneficiaries are not met in practice. Article 52 Paragraph (1) of the Limited Liability Company Law emphasizes that every member of the board of commissioners receives equal rights. This includes profit sharing and voting rights. However, in shell company practices, the board of commissioners is fictitious and is only used for administrative purposes without receiving the rights they should.

3.2. What form of legal tax liability does a limited liability company take when operating a shell company as a form of tax avoidance practice?

Tax avoidance measures are regulated by several provisions in the Ministry of Finance Regulations, which outline policies on how to conduct such activities ethically. One such policy is the Anti-Thin Capitalization Act, stipulated in Minister of Finance Regulation Number 169/PMK (PMK Number 169 of 2015). Thin Capitalization itself is a strategy to increase debt financing to shareholders so that interest costs become large and reduce taxable profits. Therefore, the government through the Anti Thin Capitalization policy sets restrictions on the debt to capital ratio so that the imposition of interest costs remains reasonable. Article 2 Paragraph (1) of PMK Number 169 of 2015 stipulates that the ratio between debt and capital is set at a maximum of 4:1 (four to one). This means that if the company's total debt exceeds four times the amount of its own capital, then the interest costs on the excess debt cannot be used as a deduction in calculating taxable income.

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In addition, there is also a tax avoidance method through a Controlled Foreign Company (CFC). A CFC is a company established abroad and controlled by its owner, who is a domestic taxpayer. The CFC scheme in tax avoidance practices is to delay the recognition of income whose capital is obtained from abroad which will be subject to domestic tax. This action is very beneficial for taxpayers, especially if the CFC is established in a country that offers relatively low tax facilities for foreign business actors (Tax Haven Country). In response to this, Indonesian law regulates this through the CFC Rules stipulated in Law No. 36 of 2008 concerning Income Tax (PPH Law). In addition, CFC Rules are also regulated in the Regulation of the Minister of Finance Number 93 / PMK.03 / 2019 (PMK Number 93 of 2019). Through Article 18 Paragraph (2) of the PPH Law, the Minister of Finance has the right to regulate when dividends from foreign companies controlled by domestic taxpayers are received. In addition, the minimum shares owned by domestic taxpayers are at least 50% (fifty percent). Furthermore, PMK Number 93 of 2019 stipulates that deemed dividends must be reported no later than the fourth month after the end of the tax year. This regulation aims to prevent taxpayers from splitting share ownership, which would lower taxable profits.

There is also a regulated tax avoidance measure, namely transfer pricing. Transfer pricing is the determination of prices for transactions of goods or services between parties with a special relationship (Panjalusman, PA, 2018). This aims to determine the amount of profit so that tax payments are smaller. An example of a scheme in this action is 2 companies controlled by the same parent, then the parent makes 1 of its companies sell goods or services at a cheap rate. With this, the profit earned by the company is small, so the tax paid will tend to be small. This is not against the law because the state applies the principle of Arm's Length Rules. Arm's Length Rules is a benchmark principle if transactions between related parties are comparable to those without special relationships, then this condition is considered normal. This is also regulated in Article 18 Paragraph (3) of the Income Tax Law which states that the Directorate General of Taxes has the authority to determine Taxable Income for taxpayers who have special relationships. This custom will be accepted and will not be subject to administrative sanctions by the Directorate General of Taxes if supported by valid documents. This is tax avoidance whose limits are regulated by law.

When a limited liability company uses a shell company for tax avoidance purposes, the question arises as to the extent of the legal arrangements and responsibilities imposed on related parties. Essentially, a company's board of commissioners and board of directors are protected by the Business Judgment Rule principle. The Business Judgment Rule is a legal doctrine that protects directors from personal liability for company losses arising from their business decisions. This doctrine is adopted in Article 97 Paragraph (5) of the Limited Liability Company Law. This article states that members of the board of directors cannot be held responsible for losses as long as the losses are not due to their negligence. The decisions that cause these losses must also be based on good faith, prudence, and without any personal interests (Akram, MH, & Fanaro, NP, 2019). However, this protection has been lost since the initial purpose of the shell company itself. According to Article 97 Paragraph (3) of the Limited Liability Company Law, the board of directors is personally liable for losses resulting from a company's negligence. These losses include decisions not based on good faith, decisions that conflict with the company's interests, and losses resulting from violations of the law.

Shell company considered unethical, because it does not comply with the ethical tax avoidance benchmarks as regulated. However, shell companies have not been explicitly regulated as a prohibited category in the law. There are several schemes in this action that are considered unethical but not automatically considered illegal. The tolerance limit for shell companies in tax avoidance practices that are considered ethical and not criminal lies in their economic substance. According to the Regulation of the Minister of Finance Number 127/PMK.010/2016 (PMK Number 127 of 2016), this practice is tolerated as long as the shell company functions as a Special Purpose Vehicle (SPV). Based on Article 2 Paragraph (4) of PMK Number 127 of 2016, an SPV is a company established for the benefit of its founder with certain special functions. The special functions in question are asset management instruments such as investment financing or share investment, but do not have real business activities. SPVs can be tolerated in accordance with Article 3 Paragraph (1) of PMK Number 127 of 2016, as long as the company or individual as a taxpayer reports its ownership. According to Article 3 Paragraph (5) of PMK Number 127 of 2016, SPV in this action acts as a third party for taxpayers to carry out its specific functions. Article 5 of PMK Number 127 of 2016 stipulates that SPV reporting must be in the name of an individual who is the owner or parent legal entity. This regulation is a tolerance limit in the act of establishing a company with personal interests. SPV actions are not illegal and their legal impact on the company itself can be accounted for administratively. The administrative responsibility in question is tax administration. This is because the use of SPV is under the supervision of the Directorate General of Taxes (DGT) as the authority that assesses taxpayer compliance.

Under tax law, the Directorate General of Taxes (DGT) has the authority to impose corrections and sanctions for unpaid taxes. If an audit finds that some or all of a tax obligation has not been met, the DGT can issue a Tax Underpayment Assessment Letter (SKPKB). This is regulated in Article 13 of Law No. 6 of 1983 concerning General Provisions and Tax Procedures, as most recently amended by Law No. 7 of 2021 concerning Harmonization of Tax Regulations. Findings that form the basis for an SKPKB can include calculation errors or unreported income generated through a shell company. For the amount of underpaid tax, the company may be subject to administrative sanctions in the form of interest or an increase of 50% (fifty percent) to 100% (one hundred percent) of the unpaid tax amount, depending on the severity of the violation (Kartikaningrum, D., 2018).

There are several actions that can absolutely exceed the tolerance limits for use *shell company* with the aim of tax avoidance. This scheme involves hiding the owner's identity, creating fictitious transactions, or concealing funds. Fictitious documents reported to the Directorate General of Taxes are regulated in Article 39 Paragraph (1) letter d of Law No. 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP), as last amended by Law No. 7 of 2021 concerning Harmonization of Tax Regulations (UU HPP). The KUP Law threatens this action with a prison sentence of 1 (one) year or a fine of 2 (two) times the amount of tax that should be paid.

However, the HPP Law provides an opportunity for companies as taxpayers to declare this error regarding fictitious reports. Based on Article 8 Paragraph (3) of the HPP Law, this can be done as long as the action has not been reported to the authorities to investigate. Companies can pay off the taxes that should be paid which are considered tax debts within a time limit of 24 months. This tax debt is also subject to an additional interest rate of 10% (ten percent) as a fine. Although given the opportunity to pay off the tax debt, the legal status of the fictitious document or transaction itself is absolutely a criminal act. This violates Article 263 Paragraph (1) of the Criminal Code, where this action is included in the category of falsifying documents that appear to be true and cause losses. This violation is subject to a maximum prison sentence of 6 (six) years.

Internal responsibility for Limited Liability Companies that practice shell companies as a form of tax avoidance rests with the board of directors and board of commissioners who act outside the principle of prudence and the interests of the company. This is regulated in Article 97 Paragraphs (3) and (4) and Article 114 Paragraph (3) of Law No. 40 of 2007 concerning Limited Liability Companies. This article states that directors and commissioners can be held personally liable for company losses due to such negligence. The losses in question are in the form of financial losses and legal losses. The company can hold a General Meeting of Shareholders (GMS) as regulated in Article 79 and Article 85 of the Limited Liability Company Law. The company can take internal steps in the form of changing the board of directors as regulated in Article 105 of the Limited Liability Company Law with clear reasons.

4. Conclusion

The practice of shell companies is a loophole exploited by limited liability companies for tax avoidance. The use of shell companies as a tax avoidance instrument contradicts the principles of good corporate governance, the implementation of which is regulated in Law No. 40 of 2007 concerning Limited Liability Companies. This action violates all principles of good corporate governance, namely transparency, accountability, responsibility, independence, and fairness. Although legally, shell companies are still tolerated in the form of Special Purpose Vehicles, their practice often contradicts their original function. Legal liability for such practices can be imposed on directors and commissioners under Articles 97 and 114 of the Limited Liability Company Law, as well as administrative and criminal sanctions in accordance with the provisions of the KUP Law, the HPP Law, and the Criminal Code. Therefore, more explicit regulations are needed to implement good corporate governance principles. This aims to ensure directors can run the company and make ethical decisions that do not harm the company. In addition, specific regulations are needed that cover the legal status of shell companies themselves as a means of tax avoidance.

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