

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Transnational Corporation in the Dynamics of Civil Law in Indonesia

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Abstract. *Massive and sustainable development in the Republic of Indonesia requires the presence of a lot of capital (capital inflow), the availability of large amounts of capital will be accommodated by the establishment of a Limited Liability Company as a legal entity, Civil Law must be able to answer the challenge of the need for the existence of a Limited Liability Company with a Legal Entity in Indonesia by ownership of company shares across countries as a form of limited liability transnational corporation.*

Keywords: *Dynamics of Civil Law; Legal Entity; Limited Liability Company; Trans National Corporation.*

1. Introduction

The sustainable development in the Republic of Indonesia is marked by the increasing availability of infrastructure facilities such as toll road and Port, will increasingly spur investment rate (Capital flow) into the Republic of Indonesia. Therefore, Legal Entity Companies that constitute limited liability companies, will become the main means in functioning their roles in various economy activities in the country. However, it is also frequently met that A Limited Liability Company commits against the law activity that may possess law consequence adverting the limited liability company mentioned. Moreover, when the against the law mentioned ends in a claim in a court done by the harmed party.

The Regulations no. 40 Year 2007, on article 1 verse 1 gives a definition that A Limited Liability Company or Perseroan Terbatas (PT) is a legal entity that constitutes capital partnerships, built

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and based on agreement, committing business activity by means of basic capital in which the whole is divided in stock and fulfilling the requirements set in this law together with its implementation rule. While the organ of the Limited Liability Company is General Meeting of Stockholders, Directors, and Board of Commissioners.

Individually A Stockholder as the company owner does not have meaningful power, he will have power over the Commissioners and directors when he constitutes the General Meeting of Stockholders or Rapat Umum Pemegang Saham (RUPS). General Meeting of Stockholders constitutes the highest forum in a Limited Liability Company.¹ General Meeting of Stockholders becomes a control device whether the organ functions of the liability company such as Directors and the Board of Commissioners have functioned as having been set for growing and developing the Company (Limited Liability Company).

Various definitions of legal entity may give more clarity about what is really meant by Legal Entity:

1) According to E. Utrecht / Moh. Soleh Djidang, there are kinds of legal entity in legal associations or terms, namely:

(1) The association (vereniging) which is deliberately and sincerely formed by people who intend to strengthen their economical positions, maintain culture, take care of social problems, and so forth. Such legal entity is of many kinds, for example, limited liability company or PT, in Dutch is called "naamloze vennootschap" (NV), state company, joint venture;

(2) The association of people (gemmaenschap van mensen) which is formed by the factors of society and political in history, for instance: country or state, province, city or town, village;

(3) People organization built and based on regulations but it does not include in above sub 1;

(4) Foundation.²

¹ Erman Rajagukguk, Perseroan Terbatas (PT) : Peran Dan Tanggung Jawab Pemegang Saham, Komisaris, dan Direksi, Jakarta : Pusat Studi Hukum Dan Ekonomi UI, Jakarta, 2011 page 2

² Chidir Ali, S.H, Badan Hukum, Bandung : Penerbit Alumn, 1999, page 73.

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Still according to Utrecht / Moh. Soleh Djindang that the kinds of the legal entity which are mentioned in subs (1), (2) and (3) are usually named corporations (corporate).

Legal entity is usually in the type of association or category, namely Corporation and Foundation. Then it is explained that based on the classification of law therefore the legal entities in Indonesia are divided into three types according to law, they are:

- (1) legal entity according to Europe
- (2) legal entity according to which is written outside of the Europe, that is legal entity according to Indonesian law now.
- (3) traditional legal entity and Islamic legal entity.³

The legal entity mentioned in sub 1 is the legal entity which is arranged according to the law in concordance with the law applied in Netherlands.

The legal entity mentioned in sub 2 is known as "*inlands rechtspersoon*" (Indonesian Legal Entity), that is the legal entity according to Regulations (ordinance) which is called by remembering articles 131 verse 3 sub IS: when the general or social needs of people outside the Europe wish to – *bij zondere behoeften* (legal entity according to "*fantasierecht*"); in today's era: legal entity according to Indonesian regulations law. Traditional legal entity and Islamic legal entity – sub 3- is the legal entity according to Bumiputera (which is generally unwritten) and the legal entity according to Islamic law. Based on the law division in public law and private law therefore the legal entity can also be divided into two more types, namely public legal entity (such as county or state, town, city, and so on) and private legal entity (such as PT/NV, and so on).⁴

2) According to Wirjono Prodjodikoro:

Legal Entity (*recht persoon*) can be a country, an autonomy region, a people's association (corporate), a company or a certain treasure.

³ Ibid

⁴ Ibid

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3) Sri Soedewi M.S. explains the legal entity division, namely: ⁵

Those which include the state administration legal entities:

1. Autonomy regions: Province, town, city
2. Institutions, Assembly, Banks

Those which include civil legal entities:

1. Zadelijk lichaam: Association managed in the book II BW starting from article 1653 and so on and in Stbl. 1870- no. 64.
2. This Foundation does not have regulations in BW
3. The legal entities that include in Trade Law, namely: Limited Liability Company, Legal Entity Co-operation, I.M.A, and so on.

The Limited Liability Company as a Legal Entity if in its business activity managed, whether it is as goods producer (Manufacture), service provider, distributor or license holder that moves his business activity based on License Agreement, with capital ownership possessed by foreign investor as the manifestation of Trans National Corporations, how Indonesian civil law can reply the possibility of law problem that may arise from investment movement activity and the active capital movement from overseas into the country mentioned.

2. Research Methods

The approach used in this research is normative juridical or legal research which is based on literature, namely legal research through researching literature materials and secondary materials. While the research specification is analytical descriptive research.

⁵ Ibid 74

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3. Results and Discussion

Civil Law becomes very strategic and important in responding the economy growth among the countries across the country borders, that is called as multinational enterprise. According to Tindall, multinational enterprises as quoted from Sunaryati Hartono: ⁶

“a combination of companies of different nationality connected by means of shareholding, managerial control or contract and constituting an economic unit.”

However, before discovering further and comprehensively on the development of Limited Liability Company as what is called as multinational enterprises that continually metamorphose together with relationship design among the countries, or the relationship between a business entity and the other one that move together with the speed and the communication pattern that changes from conventional pattern to the based on digital technology or information technology. Therefore, it will earlier be presented various Civil Law development in Indonesia in order to be able to catch various development dynamics so as to be able to conclude how the development of Limited Liability Company as multinational enterprises and the Civil Law efficiency in our country in giving its response when the Against the Law action occur which is done by that Limited Liability Company mentioned.

Uncovering historical sheet on the applicability of Civil Law that cannot be removed from historical part that should be passed by the Republic of Indonesia. At that time the Government of Netherlands Colonial had political platform for its government in Indonesia as it was written in Article 131 “Indische Staats regeling” (formerly it was Article 75 Regeringsreglement), in which the point is as follows: ⁷

1. Civil and Trade Law (so are Criminal Law together with Civil and Criminal Procedural Law) should be put in regulation books, they should be codified.
2. For the European it is embraced (exemplified) the Regulations applied in Netherlands (concordance principle)

⁶ Robert E. Tindall, *Multinational Enterprises*, Oceana Publications, Inc, New York, as quoted by Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia*, Bandung : Bina Cipta, 1962, page. 65

⁷ Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta : Intermasa, 2003, page. 11

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3. For the Native Indonesian nation and Foreign East (Chinese, Arabian, and so on), if it proves that they necessitate "social needs," those European regulations can be applied for them, whether as the whole or with some Native Indonesian nation and Foreign East (and they are also permitted to make together any new registration, in addition to it they should pay attention to the applied regulations among themselves, and they may make any deviation when it is asked by the general interests or their social needs (verse 2)

4. The Native Indonesian nation and Foreign East, as long as they have not been subjected under the Regulations together with the European, are permitted to "subject themselves" (Onderwerpen) to the Regulations applied for the European. This subjection may be done generally or by only certain action (verse 4).

5. Before the law for the Indonesian is written in the Regulations, it is always (permanently) applying the law that is presently applied for them, that is "Traditional Law" (verse 6).

Having been independent, Indonesia changed into the independence era which was mentioned as the Old Order period marked with the civil law field which was marked by the born of Principle Regulations on Agraria in 1960. According to Sudargo Gautama as quoted by Soetandyo Wignjosoebroto, that finally this Principal Regulations on Agraria was consistently "Adapts modern principles and works with modern western ideas. In the results, therefore, the new statute means that the reception of western law will continue in Indonesia.... The western principles are adopted "silently" by the legislator.⁸

After the old order period it was continued with New Order period (1966-1990 an). According to Soetandyo Wignjosoebroto:⁹

"In 1966, a big change happened in government power in Indonesia. Anti Colonialism and anti-imperialism were not announced particularly as a part of national strategy. As its change, the problems of poverty and economical difficulty were given priority as urgent problems to be solved. Gradually and step by step in a short period the whole nation attention was directed and focused into a quick need to solve the problems of citizens' low income, high rate of illiteracy, bad health condition, and the uncontrollable population growth. The concern was aroused to mobilize more national assets in order to solve the crisis in economy and social. it was clear that

⁸ Soetandyo Wignjosoebroto, *Dari Hukum Kolonial Ke Hukum Nasional*, Jakarta : PT. Raja Grafindo Persada, 1994, page 213.

⁹ Ibid, page 224

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this Old Order Government determined more to emphasize the national economy construction than the effort to obtain progressive and revolutionary politic among the nations."

The New Order Government gave main priority in the sector of economy construction, which was more known with five years construction plan or Repelita (Rencana Pembangunan Lima Tahun) and five years construction or Pelita (Pembangunan Lima Tahun), in which All were written in Big Outline Policy or GBHN (Garis-Garis Besar Haluan Negara). There the investment from various investors started to invest their capital in Indonesia. Soetandyo Wignjosoebroto explains clearly how the law development dynamics occurred together with the change period from Old Order Government to New Order Government, according to Soetandyo :¹⁰

"Like a dancer who wisely changes his dancing movement because there happens to be the change in the drum rhythm, so is the Indonesia's law, it is clearly that it has changed and it's impressive role has developed "the present time is not the same as the past time." in the development situation that direct to political configurations and the government policies that have changed, the role of law seems clearly to change very much; from its role that subordinates to succeed national revolution against new colonialism and imperialism to the new role as a part of construction tool."

To view the law as a construction tool, the law becomes an instrument that can move investment flow in order to continue the economy construction, and is marked by the flow of Limited Liability Company that its stock ownership does not only come from the native Stockholders (Investors) but also from various limited liability companies that constitute transnational corporations.

According to Sunaryati Hartono, Transnational corporations (TNC) constitutes a company that is constructed in Indonesia according to Indonesia's law but its organization, managerial, financial, contract or strategy whether all or partly constitute the unity part of bigger economy that centre in one of the overseas countries.¹¹ According to Sunaryati Hartono, that includes into the category of Transnational Corporations (TNC) is a company that constitutes a part of foreign company and has the form as

¹⁰ Ibid page. 226

¹¹ Sunaryati Hartono, op.cit, page 66

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follows:

1. Limited Liability Companies that constitute the companies in which the whole capitals belong to people or legal entities or foreign parties (wholly owned subsidiary);
2. Limited Liability Companies that constitute joint enterprises, whether constituting PMA (joining local capitals), or PMDN (using credit, technology, facilities, and foreign workers);
3. Limited Liability Companies which use skill, capital, facilities and foreign workers based on management contract, technical assistance contracts, work or creation contract, production sharing, brand use, or franchise, and so forth (Joint venture); so that in reality various decision makings that include the company managing are majority based on the wish of overseas companies that give aid, skill or expertise, capital loan, and other Indonesian companies' needs.¹²

The Regulations No. 25 Year 2007 on Investment organizes concerning the form of business entity for PMA on Article 5 verse (2) says: "foreign capital investment must be in the form limited liability company based on Indonesia's law and located in Indonesia's region, except it is determined on the contrary in the Regulations." The Article born from the Limited Liability Company Regulations No. 1 Year 1995 that it looks the regulation dynamics in the realm of Civil Law that commits the Regulations on Limited Liability Companies by improving what have not been set in the Book of Trade Law Regulations. Or being taken from the regulation no. 1 Year 1995 on Limited Liability Companies or the regulation that comes next on Limited Liability Companies, namely the Regulations No. 25 Year 2007. How the Capital Investment Regulations qualifies on the opening of Investment space for Foreign Investors to directly invest their capitals in Indonesia. It is truly realized that the presence of Foreign Investors (Foreign Direct Investment) may objectively may move business climate, employment chances, progressive economy cycle that move positively and having implications on the purchasing power of the surrounding society. There will be lots of workers that will need boarding houses, shopping needs for food as and so on, daily needs and transportation will give positive influence to the surrounding areas of the companies. of course, the presence of foreign investment will help very much for moving the national economy wheel, although there will be any negative influence produced.

¹² Ibid

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Although there are various positive influences because of the presence of foreign investment, but the government consistently gives signs so that the regulations made do not cause chaotic owing to economical activities constructed with lots of legal subjects deprived from various countries. The Regulations on Investment state that foreign investment must be in the form limited liability companies based on Indonesia's law and located in the Republic of Indonesia's region. The investment done by the Investors should be for the Limited Liability Companies based on Indonesia's law, thus everything set in the Regulations No. 40 Year 2007 are wholly applied to Limited Liability Companies formed Transnational Corporations when the companies mentioned confirm to invest in the Republic of Indonesia.

One of the Regulations set in the Regulations No. 40 Year 2007 is to organize the responsibility of the directors after the liability companies have the legal status. The Article 7 verse (4) states that Liability Company gets its legal entity status on the date the Minister Decision issued about the Liability Company's Legal Entity Approval. Then the Article 24 verse (1) legal activity on behalf the liability company that does not have legal entity status may be committed only by all members of the directors together with all of the founders, and members of Liability Companies Commissary Board, all of them have the same responsibility for the legal activity mentioned. Later Article 24 verse (2) states that in the case of legal activity as intended in the verse (1) above done by the founders on behalf of liability company that has not got legal entity status, that legal activity becomes the founder's responsibility and does not tie the liability company.

Then the Regulations No. 40 Year 2007, Article 30 verse (1) states, the Minister announces in the Additional News of the Republic of Indonesia:

- a. The Deed of Establishment of Liability Company together with the Minister Decision as mentioned in Article 7 verse (4):
- b. The Deed of budget change of Liability Company together with the Decision as mentioned in Article 21 verse (1):
- c. The Deed of Budget Change that the information has been received by the Minister.

The Regulations No 40 Year 2007 in Article 14 verse (1) and verse (2) gives Arrangements that against the law action committed by Limited Liability Companies before the Limited Liability Companies mentioned get legal entities, so every consequences that arises from every legal action mentioned does not become the limited liability companies' responsibility but becomes

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the founders' limited liability companies, when the legal action mentioned committed by the founders of the limited liability companies mentioned. Of course, from this case, it can be clarified and differentiated between the responsibility of the Limited Liability Companies and the responsibility of the founders of Limited Liability Companies. It means that every founder of the Limited Liability Companies is responsible for everything resulted in legal action done by them before they attain legal entity status.

Therefore in Article 14 verse (1) is stated that Legal Action committed by Limited Liability Companies that have not attained legal entity status, the action should be done by the whole members of Directors together with the whole founders and all members of Limited Liability Companies Commissary Board and the responsibility born from Legal Action committed by the whole members of Directors together with all the founders at the time the action done but the limited liability companies do not have legal status, therefore the responsibility belongs to All directors and all founders if the legal consequence that insist the limited liability companies to solve the obligation towards the other party, while the company does not have the Legal Entity status, so the responsibility belongs to the founders, direction Board, Commissary Board up to every private assets.

Of course, the Limited Liability Companies in the form of Transnational corporations obey the law where they invest (Indonesia). It is rarely found limited liability companies in the form of transnational corporations will commit legal action starting from various economy activities with the limited liability companies' status that have no legal entity status. If the Limited Companies start their limited liability companies opening activities in the form of purchasing the field for constructing their own fabrics or companies, so the legal action mentioned committed after the limited liability companies have the legal entity status.

4. Conclusion

M Indonesia Civil Law has developed with all of its dynamics that spread and written in the partial Regulation Rules, one of them is Limited Liability Company Regulations, namely the Regulations No. 40 Year 2007, and the Regulations No. 25 Year 2007 Concerning Investment. All of them are active response towards the construction development that needs the availability of large amounts of capital where the capital derives from foreign investment. The availability of Limited Liability Company Regulations that will be made as the container of foreign business in investment by subjecting the legal rules in the Republic of Indonesia may give legal certainty concerning the availability of foreign investment in the form of Limited Liability Companies as

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transnational corporations. Various legal regulations concerning Limited Liability Companies, necessitate integrity and regulation harmonization from various the available legislation regulations, moreover, in addition to the existence of regulations limited liability companies in omnibus law or the Work Creativity Regulations or UUCK (Undang-Undang Cipta Kerja), particularly concerning the organ of the Limited Liability Companies.

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