

## Legal Standing Of Branch Offices Of A Limited Company

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### ABSTRACT

In creating a Limited Liability Company in Indonesia, the founder of the company seek to use economic principles as much as possible, one of which is opening a location close to raw materials, labor, or consumer markets in order to broaden the scope of their operations. As a result, the head office created branch offices in several areas. This study seeks to determine the legal standing of a limited company's branch offices. The branch office is directly accountable to the head office, hence the head office is responsible for all actions and legal consequences that result. In that instance, the legal standing of the branch office will follow that of the main office, and the branch office will not be able to stand on its own legally.

### ABSTRAK

Dalam menciptakan Perseroan Terbatas di Indonesia, pendiri perusahaan berupaya menggunakan prinsip-prinsip ekonomi sebanyak-banyaknya, salah satunya adalah membuka lokasi yang dekat dengan pasar bahan baku, tenaga kerja, atau konsumen dalam rangka memperluas cakupan operasionalnya. Alhasil, kantor pusat membuat kantor cabang di beberapa daerah. Penelitian ini bertujuan untuk mengetahui kedudukan hukum kantor cabang perseroan terbatas. Kantor cabang bertanggung jawab langsung kepada kantor pusat, oleh karena itu kantor pusat bertanggung jawab atas segala tindakan dan konsekuensi hukum yang ditimbulkannya. Dalam hal ini, kedudukan hukum kantor cabang akan mengikuti kantor utama, dan kantor cabang tidak akan dapat berdiri sendiri secara legal.

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## I. INTRODUCTION

In the Indonesian business environment, the most generally used kind of corporate formation is the Limited Liability Company (hereinafter referred to as PT). PT in Indonesia can engage in a variety of business activities in accordance with the provisions of business activities permitted by existing laws and regulations (Chen, 2022). Businesspeople will almost definitely apply economic principles as much as feasible when conducting business. There is only one way to carry out the application of economic concepts carried out by PT, and that is to create a firm nearby raw resources, labor, or marketing places. In practice, this strategy is demonstrated by the presence of branch offices spread across various small and large cities from a PT. In order to broaden the reach of its business activities, The PT will usually create a branch office that will represent the PT in conducting its commercial activities in specific locations. According to prevailing economic concepts, the intention is to increase the company's turnover (Aspan, 2017; Putra, 2017). In other

words, the established branch office serves as an extension of the head office's functions in order to increase profit.

As an extension of the main office, the branch office of a PT performs all actions that cannot be separated from the supervision and responsibility of the main office despite the fact that the branch office is its own autonomous legal subject. According to what is stated in Article 1 point 1 of Law Number 40 of 2007 respecting Limited Liability Companies<sup>2</sup> (which will be referred to in the following paragraphs as the Limited Liability Company Law), that:

“A Limited Liability Company, which will be referred to as a company from here on out, is a legal entity that is a capital partnership, established on the basis of an agreement, that engages in commercial activities with authorized capital that is entirely divided into shares, and that satisfies the requirements stipulated in this Law and its implementing regulations.”

The PT's legal standing permits it to carry out legal actions that are permissible under the law. According to Subekti in his book *The Principles of Civil Law*, entities or groups, in addition to people, have rights and can engage in legal acts just like humans (Subekti, 2021). These bodies or associations have their own assets, engage in legal transactions through the intermediary of their administration, can be sued, and can also sue in court. According to this idea, branch offices cannot be considered legal entities, which indicates that they are not legal subjects in the conduct of business activities in Indonesia. Based on this context, this research was carried out with the goal of determining how the legal standing of a limited company's branch offices.

## II. RESEARCH METHODS

This research uses normative legal research, which is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Marzuki, 2016). Procedures for identification and inventory of legal materials which include primary legal materials, namely statutory regulations, secondary legal materials, namely legal literature and scientific works relating to the limited liability of shareholders on the legal standing of branch offices of a limited company, tertiary legal materials, consist of; law dictionary. Legal materials obtained, inventoried and identified are then analyzed qualitatively.

## III. RESULTS AND DISCUSSION

### 1. Legal Subject

It is vital for corporations to get to know their business partners in the business sector. As a businessperson, it is essential to ascertain if the business actor is a genuine or competent business actor as a legal subject, so that business operations would be deemed legal and carried out as a legal act. Legal subjects are those who have rights and obligations that can take the form of: People (*natuurlijke persoon*); or legal entity (*rechtsperson*) (Hutabarat et al., 2022).

A person as a legal subject is an individual from the moment he is born until the time he passes, in addition to the fetus conceived by a woman, as stated in Article 2 BW, that an infant in a woman's womb is regarded to have been born, if the child's interests compel it. In addition, a person is referred to as a legal subject who has been qualified if he has reached the age of 18 years in accordance with Article 47 jo. Article 50 of Law no. 1 of 1974 concerning Marriage (hereinafter referred to as UUUP) or have been married. According to *The Principles of Civil Law*, written by Subekti, it is stated that in addition to people, entities or associations also have rights and can carry out legal actions in the same manner as a human being. These organizations or groups have their own assets, engage in legal transactions through the medium of their management, are liable to be sued and are also able to bring legal actions in front of a judge (Subekti, 2021). These entities are referred to as legal entities. Then according to I. G. Rai Widjaya, a company can be called a legal entity if its existence occurs due to legal actions or laws (Kurniawan, 2004; Rai Widjaya, 2000). It is said to occur because of a legal action with reference to Article 1 paragraph 1 of the Limited

Liability Company Law, it is stated that the PT was established based on an agreement, therefore the PT was established by 2 or more people. According to the explanation in Article 7 paragraph (1) of the Limited Liability Company Law, it is stated that what is meant by "person" is an individual person, both Indonesian and foreign citizens or Indonesian or foreign legal entities. On the other hand, a legal entity occurs with the existence of a law because the law requires it, for example, Law Number 30 of 2002 concerning the Corruption Eradication Commission as gave birth to the existence of the Corruption Eradication Commission (KPK), Law Number 23 of 1999 concerning Bank Indonesia as gave birth to the existence of Bank Indonesia (BI), Law Number 21 of 2011 concerning Authority.

Financial Services as the birth of the Financial Services Authority (OJK) and others is same as individual legal subjects, legal entities can also enter into legal relations with other legal entities or with individuals, hence legal entities can enter into purchasing and selling agreements, exchanging, leasing, and all kinds of actions in the field of property (Usanti et al., 2012). There are several conditions that must be met by an entity/association/business entity in order to be considered a legal entity (*rechtspersoon*). According to the doctrine these conditions are as follows:(Usanti et al., 2012)

- a) The existence of separate assets;
- b) Have a specific purpose;
- c) Have their own interests;
- d) There is an organized organization

This opinion was confirmed by M. Yahya Harahap. According to M. Yahya Harahap, based on the provisions of Article 1 paragraph 1 of the Company Law, the main elements that give birth to a company as a legal entity (*rechtspersoon*, legal person, legal entity), must meet the following conditions (Harahap, 2021).

- a) Is a Capital Partnership
- b) Established By an Agreement
- c) Doing Business Activities
- d) The Birth of the Company Through the Legal Process in the Form of Government Approval

In point number 4 above it is stated that in order to obtain legal entity status, it is necessary to have approval from the government, in this case the Minister of Law and Human Rights. This is in accordance with the opinion of M. Yahya Harahap regarding the requirements for the validity of the company as a legal entity according to the Limited Liability Company Law which is regulated in Chapter II, Part One in Articles 7-14. If we examine the provisions set forth in Part One, there are several conditions that must be met in order for the establishment of the Company to be valid as a legal entity consisting of:(Harahap, 2021)

- a) Must be established by 2 (two) or more people,
- b) Establishment in the form of a Notary Deed,
- c) Made in Indonesian (*Bahasa Indonesia*),
- d) Each founder is required to take shares,
- e) Received approval from Ministry of Law and Human Rights.

These requirements are considered to be "cumulative," as opposed to "facultative" or "alternative." The establishment of a legal entity is rendered invalid because of a single deficiency or absence of fulfillment regarding a condition. In addition, it is important to note that according to the Limited Liability Company Law, Article 7 paragraph (4) states that the Company obtains the status of a legal entity on the date of the issuance of the Decree of the Minister of Law and Human Rights regarding the legalization of the company's legal entity. Then after, it is followed by the process of being proven based on the articles of association in addition to the deed of establishment.

As specified on the provisions of these laws and regulations, a company can be said to be legally a legal subject and legal entity if it has been legally recognized and has been recorded in the

additional state news. Meanwhile, if an analysis is carried out on the establishment of a branch office to determine the legal position of the branch office of a PT, to test the status of a legal entity as a legal subject, there are several aspects that can be used as a review. Judging from its establishment, the branch office was established by the PT as the head office through the power of the board of directors. In general, these provisions will be found in Article 1 of the articles of association of PT. Therefore, the branch office was not born from the provisions of the Act as a legal entity. A Limited Company (PT) will establish a branch office with the aim of expanding its business activities which reflect on the profits obtained by the company, so that the branch office is an extension of some of the affairs of its head office . This is in accordance with the definition of a branch office as stated in Article 1 point 5 of the Minister of Trade Regulation 37/2007, therefore a branch office cannot be separated from its parent company by calling it a separate entity from its head office.

On this premise, the assets in the branch office are assets of the head office, the objective of the branch office is the same as the purpose of the head office as specified in the company's articles of incorporation, and the branch office's business activities are an extension of the head office. These factors have rendered a company's standing as a legal entity obsolete. Branch offices can only be registered in accordance with Minister of Trade Regulation 37/2007 if legal entity status is obtained from the Minister of Law and Human Rights. Because of its relation to the head office and lack of approval as a legal body from the Minister of Law and Human Rights, a PT branch office cannot be deemed to be a legal subject that can stand alone (*persona standi in iudicio*) under these principles. Even though they are not legal subjects, branch offices can still carry out legal actions legally. The legitimacy of the branch office's legal action is born from the power of the board of directors as stated in the deed of establishment of the branch office. The deed of establishment of the branch office contains certain management actions and/or other actions as stipulated in the company's articles of association. To obtain the validity of legal actions outside the power of attorney in the deed of establishment of the branch office, a special power of attorney is required.

## **2. Establishment of Limited Company Branch Offices**

A head office is always necessary for the establishment of any branch locations. The branch office's connection to the holding company may include the organization's founding mandate and goals. The company's articles of association outline the conditions under which branch offices can be opened. Mainly, a company's articles of incorporation will grant the board of directors the authority to authorize the opening of additional branches. So in this case the legal basis for the establishment of a branch office is:

- a) Based on the Company's Articles of Association (Head Office)
- b) Based on the Power of the Board of Directors

Article 4 of the Limited Liability Company Law states that the provisions of the Limited Liability Company Law, the company's articles of association and other statutory provisions apply. From the article it can be seen that the articles of association are also the legal basis for the company, therefore the articles of association of the company are positive law for the company with all binding provisions in it. The binding power of the articles of association cannot be overruled by anyone even if it is adopted by the General Meeting of Shareholders (GMS) unanimously (Arly, 2008).

Nevertheless, we need to pay close attention to the explanation of Article 4, which states that the Law on PT will have precedence over the articles of association in the event of a disagreement between the articles of association and the Company Law. The provisions of the Limited Liability Company Law are also automatically binding on the PT branch office because in terms of the deed of establishment, the deed of establishment of a PT branch office is an *accessoir* of the PT establishment deed as its head office. The deed of establishment of the branch office was born because of the deed of establishment of a PT which has been approved by the Minister of Law and Human Rights as a legal entity. With this *accessoir* relationship, if the deed of establishment of the

PT as the parent company is invalid, the deed of establishment of the branch office is also invalid by law. In establishing a branch office, there is no requirement to make a notarial deed (Prasetya, 2022).

In addition to the company's articles of association, the establishment of branch offices is also based on the power of the board of directors. The form of the power of directors can be found in the clause in the articles of association of the PT regarding the establishment of branch offices which states that the company may open branches elsewhere if deemed necessary as determined by the board of directors. From the clause on the establishment of a branch office, what is meant by the determination of the board of directors in the form of power of attorney of the board of directors. The determination of the board of directors is the full authority of the board of directors because the authority is regulated in Article 103 of the Company Law as a legal mandatory. The determination of the board of directors is approved and supervised by the commissioner if it is stated in the articles of association.

In establishing a branch office, the power of attorney for the board of directors is practically formulated in the form of a deed of establishment stating in it the location of the address of the branch office, the appointment of the head of the branch office with the inclusion of duties in carrying out management actions representing PT in the appointment. Basically, the head of a branch can be appointed through a decree of the board of directors or it is also regulated in the deed of establishment of a branch office, but in general the appointment of the head of a branch of a PT is carried out simultaneously with the making of a deed of establishment of a branch office based on practical reasons. With the deed of establishment of the branch office, a legal relationship arises for the granting of power of attorney from the PT represented by the board of directors as the proxy to the head of the branch as the recipient of the power of attorney for and on behalf of the board of directors in certain actions within the scope of the branch office, which is better known as Branch Power (Kurniawan, 2004).

In the event that the head of the branch represents the actions of the management of the board of directors, the power of attorney in the deed of establishment is not a general power of attorney, but a special power of attorney because the power granted does not involve the full management of the branch office which should be carried out by the board of directors. The branch head is in charge of carrying out the management of the branch office only on certain matters as stated in the deed of establishment. For instance, a branch head is not listed in his mandate, which means that he does not have the legal authority to transfer the assets of the branch office or corporation. The duties of the branch head will be stated one by one in the deed of establishment, so that with the details of these duties, the deed of establishment of the branch office is referred to as a special power of attorney in accordance with Article 1795 BW. Likewise, According to Rachmad Setiawan in the book on Representative and Power of Attorney, the nature of power of attorney does not only refer to the details or not details of the powers granted, but also to see whether the authorized person contains certain legal actions or not certain or all legal actions (Setiawan, 2005). In addition to the provisions in the power of attorney contained in the deed of establishment, the branch office must obtain special power of attorney to carry out certain other legal actions.

Although in the legal provisions there is no obligation to make an authentic deed by a notary in establishing a branch office, in the business world, making a deed of establishment of a branch office with an authentic deed by a notary has the strongest evidentiary power compared to other deeds. According to Article 1868 BW it is stated that an authentic deed is a deed made in the form determined by law by or before a public official authorized for that at the place where the deed was made. To be said to be an authentic deed, it must meet the requirements in Article 1868 of the BW. These conditions are cumulative, if one of the conditions is not met then the deed is said to be an underhand deed (Pramono, 2015). Meanwhile, according to Law no. 30 of 2004 jo. Law No. 2 of 2014 concerning the Position of a Notary (hereinafter referred to as UU JN) Article 1 number 7, it is stated that a Notary Deed is an authentic deed made by or before a Notary according to the form

and procedure stipulated in this Law. So it is clear that the notarial deed is an authentic deed with the strongest evidentiary power compared to other deeds. In Article 1870 BW it is stated that an authentic deed is a perfect proof of what is contained in it. A notary deed as an authentic deed has the power of outwardly, formally and materially so that it makes the notary deed have perfect proving power, unless it can be proven that the deed is fake (Pramono, 2015). In addition to having the strongest evidentiary power, making an authentic deed by a notary is a form of prevention for the head office to secure the smooth running of business activities carried out by its branch offices. In this effort, the head office is required to prepare the following documents:(Solusindo, 2016)

- a) Photocopy of the Deed of Establishment of the Center from the Notary and the Decree of the Judiciary
- b) Photocopy of ID card of the Central Executive
- c) Letter of Appointment / Appointment as Branch Head from the Central Executive
- d) Branch Office Management
- e) Power of Attorney of the Central Executive / Head Office to the Head of the Branch
- f) Business License (SIUP) and Central TDP Legalized in 3 (Three) copies of each
- g) Photocopy of KTP of the Branch Head
- h) Settlement of PBB Place of Business/Office
- i) Pas Photo of Branch Head 3 X 4: 5 Sheets of Red Background
- j) Office Location Plan

After ensuring the branch office's preventive measures in carrying out its business activities, in accordance with Article 2 paragraph (1) of the Minister of Trade Regulation 37/2007, the branch office must be registered in the company register. Meanwhile, according to attachment III point 7 of Permendag 37/2007, it is stated that the required documents for new company registration for each form of business for branch offices are as follows:

- a) Photocopy of the Deed of Establishment of the Company (if any) or Letter of Appointment or a certificate equivalent to it, as Branch Offices, Supporting and Representative Offices;
- b) Photocopy of Identity Card or Passport of the administrator or person in charge; and
- c) Photocopy of business license or equivalent certificate issued by the competent agency or the Head Office of the company concerned; and
- d) Photocopy of Taxpayer Identification Number.

As a precautionary step for both the main office and the branch office in the case of a disagreement in the future, it is important to pay attention to the provisions of the applicable laws and regulations while forming a branch office.

### **3. Standing and Responsibilities of Branch Heads in the Limited Company**

It's possible that the directors of a PT won't be able to completely carry out their management responsibilities, especially if the PT has commercial operations that take place in areas that aren't directly under the jurisdiction of its main office. As a result of this reason, the board of directors possesses the right and authority to recommend the head of the branch as an extension of the board of directors in the process of managing the firm. According to Article 103 of the Law on PT, the appointment of the head of the branch is determined by the authority that the branch possesses, as granted by the board of directors. It is essential that the provisions of Article 1792 BW be adhered to whenever there is a matter concerning a proxy for the board of directors.

In Article 1792 BW it is stated that the granting of power (*lastgeving*) is an agreement by which one person gives power to another person, for and on his behalf to carry out an affair. From the article, it can be stated that the elements of the granting of power of attorney are: Agreement; There is a business; and For and on behalf of the power of attorney. As with an agreement, the granting of power of attorney must take into account the validity of an agreement as formulated in Article 1320 BW, including: Agreement; Legally proficient; The existence of an object that is agreed upon, in the granting of power of attorney the existence of an affair is the object of the agreement; and permissible causes.

In a power of attorney agreement, the phrase "for and on behalf of" of the power of attorney is always included. The meaning of the word "for and on behalf of" in the granting of power of attorney gives rise to the function of a representative of an attorney over the giver of the power of attorney. Representatives do not only come from the granting of power or agreement, but also from the law (Meliala, 1982). In relation to the granting of power of attorney to the branch, the head of the branch performs a representation, namely representing the PT (i.e. the Board of Directors) to carry out a legal action in a certain legal area. In representing the PT, the branch leader acts for and on behalf of the PT and all causes and consequences arising from the presence of such representatives are the full responsibility of the PT as the party represented (Kurniawan, 2004).

The existence of a branch power does not make the branch head an organ of the company. The organs of the company in the PT are the GMS, the directors and the commissioners as regulated in the limited company law (UUPT). Therefore, the head of the branch is not directly responsible to the GMS like the board of directors, but is only responsible to the board of directors as the representative of the company. In relation to the appointment, *the ius contractus actus* principle also applies.

A person is said to be responsible according to BW if:

- a) Because of his mistake
- b) Due to negligence or carelessness
- c) Because of the actions of people and goods that are their responsibility

Due these actions cause losses, according to Article 1365 BW, the person must be responsible for the losses caused. In the act of violating the law in Article 1365 BW, there are 2 important elements, namely errors and losses suffered. In order to be able to claim compensation for his actions, the injured party must be able to prove the existence of the loss suffered and the existence of elements of error, negligence or carelessness and the actions of people or goods that are his dependents. Basically, the branch head is an employee employed by a company. It is essential to bear in mind that even while a branch head may be appointed by the board of directors, the board of directors will always act for and on behalf of the firm, despite the fact that the board of directors may be the ones who make the appointment. The branch manager has the same authority as the holding company and can act in its name. Employers and individuals who appoint others to represent their affairs are held liable for losses suffered by their servants or subordinates in the performance of the work for which these persons are used. This is stated in accordance with the provisions in Article 1367 subsection (3) of the BW.

Limited Company (PT) can not be responsible for the actions of its management if it can be proven that there was an error made by the management in accordance with the corridor determined by PT. If it is proven that the management has acted outside the orders from the PT, then the management is personally responsible for the party who suffered losses for his actions. This is in compliance with the terms of Article 1807 paragraph (2) BW, which states that the power of attorney is not liable for activities taken outside of the scope of the power granted, unless otherwise agreed. Article 97 of the Law on PT regulates the duties of a director in order to avoid these legal issues. This condition is adhered to by the branch manager in the same way as the board of directors' attorney is. According to Article 97, paragraph (3) of the Limited Liability Company Law, each member of the board of directors is personally liable for the company's "loss" if he is "guilty" or "negligent" in carrying out his obligations in line with the regulations referred to in paragraph (1). (2). Here, the judge will disregard the PT's limited liability status, opening the door for the branch manager to act as a proxy manager with full immunity. The obligation of the branch head shall be fully borne by him as an unlimited liability, including the branch head's personal assets. This is known as piercing the corporate veil.

Proof of an error or omission that causes a loss is required in order to bind the duty of the branch head. For the purposes of this discussion, "element of error" shall mean the provisions of Article 92 paragraph (2) jo. Article 97 paragraph (2), which deal with policies deemed appropriate,

within the limits specified in the Limited Liability Company Law and/or articles of association, good faith, and fiduciary duty. The branch manager is immune to liability if no wrongdoing or carelessness can be linked to his or her actions, but the corporation itself bears legal responsibility for the power of attorney's interactions with the principal and the worker. According to Article 97(5), directors are protected from liability under subsection (3) only if they can provide evidence that one of the following conditions is met:

- a) The loss is not due to his fault or negligence;
- b) Has carried out management in good faith and prudence for the benefit and in accordance with the aims and objectives of the Company;
- c) Does not have a conflict of interest, either directly or indirectly, over management actions that result in losses; and
- d) Have taken action to prevent the occurrence or continuation of the loss.

#### IV. CONCLUSION

The Branch Office is a subsidiary of the Head Office, and it will be accountable to the Head Office as well. As can be inferred from the fact that it was established, the Branch Office was founded by the Head Office through the power of the board of directors; hence, a notarial deed in its establishment is not required but may be included as an optional supplement. The branch office serves the same function as the main office, which is to carry out the company's objectives as outlined in its articles of association. As a result, the foundation for a company to be considered a legal subject and an entity has been removed. If a Limited Liability Company has been acknowledged and is listed in further state news, it can be regarded legally as a legal subject and an entity.

In this case, the Branch Office can only be registered in accordance with Regulation 37/2007 of the Minister of Trade (Permendag) if the Minister of Law and Human Rights has not granted legal entity status. Indeed, the branch office of a PT cannot be considered an independent legal subject. Despite the fact that the branch office is not a legal subject, it can legitimately carry out legal actions through the board of directors' power of attorney as indicated in the branch office's establishment deed. In regards to the granting of power of attorney to a branch, the head of the branch acts on behalf of the Board of Directors to pursue legal action in a specific region. The existence of this branch authority does not qualify the branch manager as a business organ. As a result, the head of the branch is not directly accountable to the GMS, like the board of directors, but only to the board of directors as the company's representative. After all, as a result of his nomination by the Board of Directors, he also acts on behalf of the corporation. If the branch manager is shown to have made a mistake, PT cannot bear sole responsibility. So that the branch manager's responsibility can be fully attributed to him and become an unrestricted obligation that encompasses his personal assets.

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