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Legal Aspects of Merging Limited Liability Companies in Company Law by Merger

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Abstract

In general, the goal of a merger is to obtain synergy or added value. The added value in question is more long-term compared to the added value that is temporary. Therefore, there is no synergy of a merger that cannot be seen shortly after the merger occurs. But it takes quite a long time. The synergy that occurs as a result of a merger of business bias in the form of ups and downs of economic questions, and financial synergy in the form of capital increase. The advantage of merger is that the takeover through a merger is simpler and cheaper compared to the other takeovers while the merger's shortcomings are that there must be approval from the shareholders of each company, whereas to obtain the agreement requires a long time. The merger strategy is an alternative to expanding the business.

Keywords: Merger, Limited Liability Company

A. Introduction

The economic conditions of a country, then of course there are some things that are relevant to be discussed. This then makes us have to think about how to simply understand a country's economy easily. In the context of the Indonesian economy, Indonesia's condition can be seen from the number of limited companies. According to article 1 paragraph 1 of Law Number 1 of 1995 Concerning Limited Liability Companies (here in after referred to as PT) a legal entity established under an agreement, carries out business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and the implementing regulations. As for the understanding according to Law Number 40 of 2007 concerning Limited Liability Companies, PT is a legal entity which is a capital alliance, established based on an agreement, conducts business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in this law and regulations the executor. Discussing about PT can not be separated also by discussing about merging a PT (in this case called Merger). The development of mergers in history experienced ups and downs. However, a common thread that can be drawn from history is that the ebb and flow of the merger has a positive correlation with the ebb and flow of the country's business concerned. That

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is, when a country's business and economic situation is booming, then in principle many mergers are conducted. Conversely, when the economy is in a recession, the merger activity decreases. This is reasonable, because a merger is seen as one of expanding business which certainly requires cost and capital, where the cost and capital are reluctant to be spent by people if the business prospects at the place are not good. Mergers are usually taken by large companies to improve company efficiency and performance, because these methods are used to achieve a goal. Merger is a merger of two or more companies by maintaining one company and liquidating other companies.[1]

B. Research Methods

In making this scientific work, the author uses normative and analytical research methods. The author uses this method because, this method is directly related to the law or regulation with a knife analysis using the law. Here the author discusses the legal aspects or rules governing the merger.

C. Results and Discussion

1. Merger

Merger is derived from the words "merger", "fusiom", or "absorption", which means "to merge, while mergers derived from the verb" to merge ", are widely understood as legal actions carried out by one or more companies, to combine with other existing companies, which causes the assets and liabilities of the merging company to shift due to the law for the company that received the merger, in addition to the status of the merged company ending due to the law.

A merger is a legal act carried out by one or more companies to merge with another existing company and subsequently a company which merges into a disperse.[2] A merger is a merger of two or more banks, by maintaining the establishment of one bank and dissolving other banks without liquidating first.[3]

Beams and Yusuf explained that a merger occurs when a company takes over all operations of another business entity and the entity that is taken over is dissolved so that the company that is taken over is dissolved, while the company that is taking over continues to operate legally as a business entity and continues the company's activities taken over.[4] A merger, which is a form of business combination, is a legal act carried out by one or more companies to merge with other existing companies, thereby causing a merged company to disperse (without liquidation).

A merger is the merging of two or more business entities that are relatively balanced in strength, resulting in a new combination that is a mutually reinforcing container. Based on the economic encyclopedia, a merger is said to be a combination of two companies, which are generally through stock exchange and merging of two or

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[1] Abdul rasyid ssaliman, *hukum bisnis* (Jakarta : kencana 2005),hlm.109
[2] *Ibid. Hlm 141*
[3] Peraturan pemerintah Nomor 28 tahun 1999 tentang Merger, Konsolidasi, dan Akuisi bank
[4] Widijowati, *Op.cit. hlm 141*

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more similar companies into a single company in such a way that one absorbs or accommodates the other.

2. Procedure for Merger According to the Law on Limited Liability Companies

a) Juridical Function of Merger Section

For companies or groups of companies that often merge, in that company there is often a department or special section that thinks about and prepares for this merger. This department has the following main tasks :

1) Find the right merger candidate;
2) Taking over and integrating companies into the parent company.

While the steps taken by this department are as follows:

1) Streamlining the company's operations that were taken over;
2) Implement a control system so that the parent company can manage the new division effectively;

3. Announcements for a Merger

As it is known that one aspect of the regulation on mergers is the aspect of openness (dsidclosure). As already stated, one of the methods for protecting the parties mentioned above, especially the interests of the community. It is mandatory announcements (in newspapers and state news) on certain actions or stages in the process of implementing the merger. This is important so that interested parties can know and can take certain steps to protect themselves and their actions a merger that might harm his interests..

4. The purpose and benefits of implementing a merger

There are several benefits obtained in a merger for a company or bank, namely:

1) Market considerations
2) Distribution savings
3) Diversification
4) Manufacturing advantages
5) Research and development
6) Financial considerations
7) Use of human resources
8) Sophistication and automation
9) Sophisticated automation

Besides that, there are still other benefits of a merger, such as saving tax if the merger is with a meugi expansion, and so on. However, mergers and acquisitions are not immune to weaknesses, or dangerous areas that must be watched out for, including:

1) Accounts receivables
2) Inventories
3) Property, plant, dan equipment
4) Labilities

As a general target of mergers, there are several common goals for a merger to do, namely to increase market concentration, increase efficiency, develop new innovations, as an investment tool, as a means of technology transfer, gain

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international access, increase competitiveness, maximize resources, and guarantee supply of raw materials.

Mergers have almost the same goals as acquisitions, namely:

1) Mergers have the purpose of increasing capital
2) Merger has a goal to save the continuity of production
3) Mergers have a goal to develop distribution channels.
4) Merger has the objective to reduce business competition
5) Mergers have a goal of creating a monopolistic market system.[5]

Mergers have great benefits, both for companies that do mergers and consumers, including: [6]

1) Mergers provide efficiency and increase productivity for companies implementing mergers.
2) Mergers provide solutions to various problems, such as financial difficulties or bankruptcy threats
3) Mergers can increase excess capacity utilization, reduce transportation costs, and replace performance managers who are not available internally.
4) Mergers can provide access to capital within the company.
5) Mergers can be useful in research and development.
6) Mergers can produce lower production costs, lower prices, and improve the quality of goods that benefit consumers.

5. Classification of Mergers

1) In terms of business types

When viewed in terms of the type of business of the companies conducting the merger, the merger can be divided into four categories as follows:

a) Horizontal mergers
b) Vertical merger
c) Generic mergers
d) Merger of conglomerates

The following is an explanation of each type of meger, as follows:

a) Horizontal mergers
A horizontal merger is a merger between two or more companies where all of the companies are engaged in the same line of business.[7]

b) Vertical merger
What is meant by a vertical merger is a combination of two companies or more with which one acts as a supplier for the other. So their business relationship is a producer-supplier relationship, or a relationship from upstream to downstream. An example of a vertical merger is the merger between Du Pond and the Conoco petroleum company, because Du Pond needs petroleum for its chemical processes.

c) Generic mergers
With con-generic mergers, companies that join together are interconnected with one another, which has the same nature of production, but cannot be said to be a producer of the same product

[5] Widijowati *Loc.cit. hlm 142*
[6]*Loc.cit 142*
[7]Munir fuady, *hukum tentang merger,* PT CITRA ADITYA BAKTI, bandung, 2002, hlm 86

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(horizontal), and neither is the relationship between producers (vertical). For example a combination of leasing companies with banks.

d) Merger of conglomerates
Conglomerate merger is a combination of two or more companies that have absolutely no business relationship with one another.

2) Judging from the Terms of Procedure for Merging

When viewed in terms of the procedure for how the merger is carried out, the merger can be classified as follows:

a) Merger with liquidation and sale and purchase of assets
b) Merger with the sale and purchase of assets and liquidation
c) Merger with the sale and purchase of shares and liquidation

The following is an explanation for each type of merger, as follows:

a) Liquidation and Sale and Purchase of Assets
In this case the target company is liquidated first. Only then will the remaining assets be distributed to shareholders according to their respective portions. Furthermore, the individual shareholders sell the assets to the merger company that will buy them.

b) Buying and Selling Assets and Liquidation
With this method like this, the buying and selling of assets of the target company is done first. Furthermore, only the liquidation of the target company was carried out.

c) Buy and Sell Stocks and Liquidation
It can also be purchased by all target company shares from each individual shareholder. After that, the target company is liquidated and the assets transferred to the buyer's company. In this case, there are countries that do not require the purchase of all shares, but only a large portion.

3) In terms of variation

When viewed in terms of variations, there are several types of mergers as follows:

a) Simple Merger
This is a prototype of the merger. Such a merger is carried out with a simple procedure, where a company merges with another company and one of them merges, while all assets and liabilities of the merged company turn to the existing company. Modern merger law stipulates that the transfer of assets and liabilities occurs by the operation of law at the time the merger agreement is signed, unless the agreement specifies otherwise.

b) Pratical Merger
This is more a variation of a simple merger form. A practical merger occurs, for example, not with a cash payment from the target company's stock price, but in exchange for the takeover's shares.

c) Triangular
In the merger of this triangle, the takeover company forms a full subsidiary (100% share), and towards that subsidiary the target company is merged.

d) Reverse Triangular

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In an inverted triangle merger, the newly formed full subsidiary subsidiary is merged into the target company.

e) Merger of Parent
In this case, the merger is between a subsidiary and its parent, where one of them will disappear. So this is a merger in one group of companies.

f) Arm's Length
This happens if you are going to merge is a subsidiary company which is a full subsidiary of the parent company.

g) De Facto Merger
Sometimes a transaction is carried out without mentioning that what is being done is a merger. But in reality, the transaction carries the same results as the merger.

6. Arrangement of Merger in Law concerning Limited Liability Companies.

Every action carried out in the rule of law must have a legal basis. Moreover, legal action in the form of a company merger that is so important its position in the field of corporate law. Juridically, the legal basis for the merger is as follows:[8]

a) The main legal basis (UUPT and PP)
b) Basic contractual law.
c) Legal status of company status (Capital Market, PMA, BUMN)
d) The legal basis for the consequences of the merger
e) The legal basis for business trials

The main legal basis for a company merger is the UUPT and its implementing regulations. The UUPT regulates mergers, acquisitions and consolidations starting from articles 26, 62, 122, 123, 126, 127, 128, 129, 132, 133, and 152. As it is known, the Limited Liability Company Law uses the term "merger" for merger, " takeovers "for acquisitions, and" consolidations "for consolidation. In addition to the Company Law, on February 24, 1998 Government Regulation No. 27 of 1998 was issued which manifested the provisions in law number 1 of 1995 concerning limited liability companies (old Company Law). According to Article 26 of the Company Law, changes to the articles of association made in the context of a merger or takeover take effect since:

a) Ministerial approval
b) Then what is stipulated in the minister's agreement, or
c) Notification of amendments to the articles of association received by the minister, or
d) Then what is stipulated in the merger deed or take over deed according to the Company Law, the directors of the company who plan to merge and accept the merger must prepare a merger plan in accordance with article 123 paragraph (2) of the Company Law which contains at least:
   1) Name and domicile of each company that will merge
   2) Reasons and explanations of the company Directors who will conduct the merger and the merger requirements
   3) Procedures for valuation and conversion of companies that will carry out the merger and merger requirements

[8] *ibid.*,hlm 62

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4) Draft amendments to the company's articles of association that receive a merger if the financial statements referred to in article 66 paragraph (2) letter (a) cover the last 3 (three) financial years of each company that will merge.
5) Plans for the continuation or termination of the business activities of the company that will merge.
6) Proforma balance sheet of the company receiving the merger in accordance with generally accepted accounting principles in Indonesia
7) How to settle company status, rights and obligations which will merge with third parties
8) How to settle company rights and responsibilities that will merge with third parties
9) How to settle the rights of shareholders who do not agree to the merger of the company
10) The name of the member of the director and the board of commissioners as well as salary, honorarium, and allowances for members of the board of directors and the board of commissioners of the company who received the merger.
11) Estimated time period for the merger
12) Reports on the circumstances, developments and results achieved from each company that will conduct the merger.
13) The main activity of each company that conducts mergers and changes that occur during the current financial year
14) The details of problems that arise during the current financial year affect the activities of the company that will conduct the merger.

The merger design as referred to in paragraph (2) after obtaining the approval of the board of commissioners of each company is submitted to the respective GMS for approval.

D. Conclusions

1. Merger is the process of diffusion or merging of two companies with one of them still standing by the name of the company while the other is lost with all the names and assets included in the standing company. The merger's advantage is that the takeover through a merger is simpler and cheaper than the other takeovers while the merger's shortcomings are that there must be approval from the shareholders of each company, while to get the agreement requires a long time. The merger strategy is an alternative to expanding the business.
2. Theoretically, the goal of a merger is to create a resilient company through the statement of a number of strengths such as assets, capital, technology, and business opportunities. In general, the goal of a merger is to obtain synergy or added value. The added value in question is more lengthy compared to temporary added value. Therefore, whether there is a synergy or not a merger can not be seen shortly after the merger occurred. But it takes quite a long time. Synergy that occurs as a result of a merger of

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business bias in the form of ups and downs of economic scale, and financial synergy in the form of capital increase.

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