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Legal Certainty To Sanction Violations Of Publicity By Joining Limited Company

Widad Muhammad Khaitam[1], Budi Santoso[2], Lutfi Effendi[3]
Master Program Notary, Postgraduate of Law Faculty Brawijaya University, Jl. MT. Haryono 169 Malang 65145

Abstract
The writing of this journal aims to analyze the legal certainty of sanction of violation of the principle of publicity by Limited Liability Company which merges and analyzes legal protection which can be given to third party if there is a loss of violation of compliance of publicity principle by Limited Liability Company which merges. Normative juridical research using legislative approaches and comparative approaches. Based on the results of the study it is known that the sanction of violation of the fulfillment of the principle of publicity can be in the form of administrative sanctions. Furthermore, legal protection provided to third parties is an opportunity to sue the Limited Liability Company to the District Court.
Keywords: Legal Certainty, Publicity Principle, Merger, Limited Liability Company.

Background

The company is an economic sense that is widely used in business activities and daily life work. According to Molengraaff company is an entire act that is perpetrated continuously, acting out to earn income by trading or delivering goods or entering into a trading agreement. He sees the company's understanding from an economic point of view because the purpose of earning is done by trading goods, handing over goods, trading agreements.

Whereas in the formulation of Law that is in Law Number 3 Year 1982 concerning Obligatory Company Registration is determined: "A company is any form of business that carries on any kind of business that is permanent and continuous and established, operates and domiciled within the territory of the State of Indonesia for the purpose of obtaining profit and or profit".[4]

The form of a company is a business entity that becomes a vehicle for the mobilization of each type of business activities, where in general can be distinguished form of corporate law consists of companies that are legal entities and companies not legal entities, both state and private companies.[5]

Based form of business entities that exist in Indonesia namely; Individual Enterprise, Firm (Fa), Limited Liability Company (CV), Limited Liability Company (PT), Public Company (PERUM) foundations and cooperatives.

Of the types of companies the Limited Liability Company (PT) is an economic institution that has a high degree of flexibility. These entities can accommodate economic activities that have a complexity span from very simple (involving few people), to a very high complexity span. Therefore, PT becomes a container to perform economic activity most used by economic actors rather than other types of business.[6]

PT is a legal entity which is a capital alliance, established under a contract, which is wholly subdivided into shares and meets the requirements set forth in this law and its implementing regulations.[7]

Limited Liability Company is a form of company shareholders shares in which the shareholder (Persero) participates by taking one or more shares and performing legal actions made by the name of the joint, Irresponsibly solely for their consent (with responsibility solely confined to the capital they deposit).[8]

Based on this understanding, to be referred to as a company company according to Law no. 40 of 2007 it must meet the following elements:

a. Legal entity;
b. Established on a contractual basis;
c. Conducting business activities;
d. Authorized capital divided over shares;
e. Meet the requirements stipulated in Law Number 40 Year 2007 and its implementing regulations.[1]

[1] Student Program Master of Notary Faculty of Law, Brawijaya University, Malang.
[2] Supervisor I, Lecturer Master of Notary Faculty of Law Brawijaya University Malang.
[3] Supervisor II, Lecturer Master of Notary Faculty of Law Brawijaya University Malang.
[4]Abdul kadir muhammad, **Hukum Perusahaan Indonesia**, Citra Aditya Bakti, Bandung, 2010, hal. 7
[5]*Ibid.*
[6] Tri Budiyono, **Hukum Perusahaan**, Griya Media, salatiga, 2011, hal. 5
[7] Pasal 1 Angka 1 Undang-Undang Nomor 40 Tahun 2007.
[8] C.S.T. Kansil dan Christine S.T. Kansil. 2005. **Hukum Perusahaan Indonesia** (Aspek Hukum Dalam Ekonomi) Bagian 1., hlm. 91.

In the course of running their business activities, PT should also consider how the business can grow.

PT is difficult to develop, either because of lack of capital and because of weak management or almost bankruptcy and unable to compete with other companies, Development of limited liability company can be done by merging or commonly called mergers. The merger was conducted between one company and another company that received the merger. Development of the company by merging occurs with there are few (at least two) companies that join, but one of them remains standing, while others are dissolved because merged into the company that still exists.[2]

The definition of incorporation has been regulated normatively in several laws and regulations as follows:[3]

Article 1 number (2) of the Government Regulation of the Republic of Indonesia Number 27 Year 1998 on Merger, Consolidation and Acquisition of Limited Liability Company explains that: "The merger is a legal act committed by one or more companies to merge with another company that already exists and then the company that merges itself becomes disbanded."

Article 1 number (9) of Law Number 40 Year 2007 regarding Limited Liability Company explains that: , "Merger is a legal act committed by one or more companies to merge with another existing company that resulted in the assets and liabilities of the company that merged to switch to the company receiving the merger and subsequently the company's incorporated status ended due to the law."

Merger gives a significant impact on the micro-condition of the company's internal as well as to macroeconomic conditions. The implementation of the merger has consonant to the stakeholders, both the company involved and the other party. Internal impacts that arise are the achievement of corporate objectives in accordance with what is expected if the merger, especially capital increase. Merger is done with the consideration that merging is one step that is optimal and efficient in an effort to improve a company. With the merger is expected to produce a strong and sturdy company so as to realize a good national economy.[4]

One of the principles that apply to the PT that has been effectively applied juridically to merge is the principle of publicity by announcing its merger in national newspapers. Such matter as stipulated in Article 133 paragraph (1) and (2) of Law Number 40 Year 2007 concerning Limited Liability Company namely: Require that the Board of Directors of the company receiving the incorporation shall announce the result of the merger by:

a. Announced in 1 (one) newspaper or more;
b. Shall be conducted no later than 30 (thirty) days from the date of entry into force of the incorporation.

In paragraph (2) it is stated that the provisions contained in paragraph (1) shall also apply to the Board of Directors of the Company whose shares are foreclosed.

Announcement is intended to let interested third parties know that a Merger, Consolidation or Takeover has taken place. In this case the announcement shall be made within 30 (thirty) days from the date of:

1. The Minister's approval of the amendment of the articles of association in the event of a Merger
2. Notification shall be received by the Minister in the event of any amendment of the articles of association as referred to in Article 21 paragraph (3) or that are not accompanied by amendments to the articles of association.[5]

However, there are PT who ignore what has been regulated in Article 133 paragraph (1) and (2) of Law Number 40 Year 2007, one example is the merger of PT Buana Perkasa with PT Prima Utama. The company ignores or bypass the obligation of the newspaper announcement on the grounds to cut expenses and cut time in the merging process. With the existence of PT who neglect the obligation to announce the news on the merger there should be the responsibility of the PT against the violation of the provisions.

Thats should every legislation can ensure legal certainty that became one of the objectives of law. Not yet the provision of legal sanctions and legal consequences of violation of the principle of publicitymakes The question of legal certainty over sanctions of violation of the compliance of the PT publicity principle of merging.[6]

Based on the above background then, the authors feel the need to conduct research on the legal certainty of the principle of publicity against the PT who do the merger of the company because the existing legislation is

[1] Pasal 1 angka 1 Undang-Undang Nomor 40 Tahun 2007.
[2] Abdul Kadir Muhammad, op. Cit. Hal. 378.
[3] Johannes ibrahim, **Hukum Organisasi Perusahaan**, Relika Aditama, Bandung, hal. 77

[4] Ibid., hal 81
[5] Hukum online, **Langkah Demi Langkah Proses Merger Perseroan***(online)*, http://www.hukumonline.com/klinik/detail/lt4d1358d8a0a80/langkah-demi-langkah-proses-merger-perseroan, (diakses pada tanggal 13 juni 2016*Loc. cit*
[6] *Loc. cit*

not complete in regulating the responsibility of PT for violation of compliance the principle of publicity. Therefore, the authors do research on the principle of publicity merger company with the title "certainty laws sanctions penalty compliance fulfillment publicity principles by limited liability companies do merging".[1]

Based on the above background, there are normative legal issues that are interesting to be analyzed, namely: how is the legal certainty over sanction of violation of the principle of publicity by PT conducting merger and How is the protection of third party law for violation of publicity principle by PT merged.

This journal is compiled using normative juridical research method using legislation approach and comparative approach, and supported by primary legal material in the form of the Constitution of the Republic of Indonesia Year 1945, Law Number 40 Year 2007 concerning Limited Liability Company, Law Number 3 of 1982 concerning Obligatory Company Registration, Law Number 8 of 1995 concerning Capital Market and secondary data in the form of literature, research results, papers in seminars, journals, articles, and related lecture notes With the legal i

Discussion

A. Legal Certainty Analysis of Sanction of Fulfillment of Publicity Principle by PT Performing Merger

Responsibility for non-compliance with the principle of publicity can be seen from two violations, namely the violation of non-compliance with the obligation and the delay in the fulfillment based on the time specified. The non-fulfillment of obligations in carrying out what has been regulated by the Law can be given accountability in the form of sanctions by the government. Sanctions may be in the form of criminal, administrative and civil litigation. Since Law no. 40 of 2007 has no provisions on sanctions, it requires other legislation relating to issues of violation of compliance merger publicity principles to be able to find legal certainty.

1. The fulfillment of the publicity principle based on Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisition of Shares of the Company That Can Result the Monopolistic Practices and Unfair Business Attendance

Government Regulation Number 57 of 2010 concerning Merger or Consolidation of Business Entities and Acquisitions of Shares of Corporations That May Lead to Monopolistic Practices and Unsound Business Entities in Article 5 paragraph (1) require that the PT undertaking the Merger shall announce the merger to the Commission no later than 30) Working days from the date of effective date. However, such liability only applies if there is a change of asset value in the amount of asset value of Rp2,500,000,000,000.00 (two trillion five hundred billion rupiah) and / or sales value of Rp5,000,000,000,000.00 (five trillion rupiahs) This obligation does not apply to the merger under the asset's value.[2]

The obligation to announce in Article 5 paragraph (2) declares the announcement notified to the commission. The Commission in question is the Business Competition Supervisory Commission (KPPU). In performing its duties, KPPU is granted the right to make KPPU regulations.[3]

Regulations related to the announcement of merger of PT are KPPU Regulation No. 4 of 2012 concerning Guidance on the Imposition of Fines of Notification of Merger or Consolidation of Business Entities and Takeover of Company Shares (Perkom 4, 2012).

Article 2 states that the merged corporation shall notify the merger result to KPPU at the latest within 30 (thirty) days since the incorporation is effective in juridical manner. The juridical effective effect intended by KPPU is in accordance with the provisions of article 133 Act Number 40 Year 2007.[4]

In Article 4 of 2012, there is a sanction provision if there is a violation of the above provisions. The sanctions provisions are in the form of administrative fine sanction contained in Article 12 of Perkom Number 4 2012. The administrative penalty is Rp 1,000,000,000.00 (one billion rupiah) for every day of delay, provided that the administrative penalty as a whole is at a maximum of Rp 25,000,000,000.00 (twenty five billion rupiah).

Associated with Article 133 of Law No. 40 of 2007 there are differences in objects that are directed from publications that must be done by the PT who do the merger. In article 133 the purpose of the announcement is the announcement to provide information to the public that the existence of a new legal entity in the form of a jurisdiction that has been applied jurudis that the PT has been merged. In Perkom No. 4 of 2012 announcement addressed to the Commission.

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[1]Charlie, **Pelaksanaan Penggabungan PT Buana Perkasa Dengan PT Prima Utama**, TESIS, Fakultas Hukum, Universitas Sumatera Utara, 2014, hal. 52

[2] Article 5 paragraph (2) of Government Regulation Number 57 Year 2010.

[3] Article 1 paragraph (7) of Government Regulation Number 57 Year 2010..

[4]Article 2 paragraph (1) of KPPU Regulation No. 4/2012 concerning Guidance on the Imposition of Fines of Notification of Merger or Consolidation of Business Entities and Acquisitions of Shares of the Company

There is also a difference in Article 133 announcement by announcing a minimum merger in one newspaper or more whereas in Number 4 of 2012 no regulates the obligation by PT to announce the merger in the newspaper. The announcement is only a written notice to KPPU that the PT has been valid by juridical merger.

With such discrepancies, if there is a violation of Article 133 of Law Number 40 2007, KPPU's regulation can not be used to be the responsibility of PT for such violation. The sanction provisions contained in Article 4 of 2012 can not be used in violation of the principle of publicity which is contained in Article 133 of Law Number 40 Year 2007.Jadi penalty awarded by the Number 4 of 2010 can not be imposed by violation of Article 133 of Law Number 40 Year 2007.

Supposed to be the Number 4 of 2012 can be a legal basis to impose sanctions on violation of the principle of publicity in Article 133 of Law Number 40 Year 2007. This is due to the obligation of notification of merger of companies in the form of PT to KPPU pursuant to Article 133 Law Number 40 Year 2007. However, KPPU only limits the sanction for violation to KPPU only.[1]

There are no other rules directly related to regulating the responsibility of the PT in violation of the publicity principle contained in article 133. So in this case the government does not impose sanctions in case of violation of the order of article 133 of Law Number 40 Year 2007 (The law is not perfect). Thus there is no distinction between the PT who comply with the provisions of article 133 and who violate article 133.[2]

In the absence of sanction provisions for such violations there is no guarantee of legal certainty for violation of the principle of publicity that has been regulated in Article 133 of Law No. 40 of 2007. To be able to solve the problem of violation of compliance the principle of publicity will compare with the same rules in regulating the obligation to publish the incorporation of PT in order to distinguish between those who implement and those who violate the fulfillment of publications to obtain legal certainty.

2. Comparison of the fulfillment of the principle of publicity in article 133 with Article 127 paragraph (2) of Law Number 40 Year 2007

It has been mentioned before that the obligation of PT announces the merger to be done twice. That is when the merging process takes place and at the time of the merger has been valid by juridical. If viewed from the objectives of the two articles have the same purpose, namely to notify the relevant parties that there will be a new legal entity in the form of PT born from the merger.[3]

Should violation of the provisions contained in Article 133 of Law Number 40 Year 2007 can be accounted for as stipulated in Article 127 paragraph (2) of the Act. Since the two provisions have similarities and differences between Article 127 Paragraph (2) The PT shall announce the summary of the draft in one or more newspapers while in Article 133 paragraph (1) the PT shall announce in one or more newspapers that the incorporation is applicable juridically.

By equally obliging to make an announcement, the consequences of violation of Article 127 paragraph (2) may also be given to the PT in violation of article 133. In the obligation stipulated in Article 127 paragraph (2) the merger of the PT has not been valid by juridical, so if it is not fulfilled then The consequence is that the process of merging the PT can not proceed.

Whereas in article 133 the Company has applied juridically to the merger. Should if the same violation of the fulfillment of the obligation of announcement as referred to in Article 127 paragraph (2), PT can not carry out its merger if it violates the provisions of Article 133. Although the merger of PT has been valid by juridical PT should not run its business prior to the announcement that PT has merged.

3. Comparison of Compliance Principle of Publicity with Compliance Principle of Transparency In Merger PT

Openness is a general guideline that requires issuers, public companies and other parties subject to the law number 8 of 1995 concerning the capital market to inform the public in a timely manner all material information concerning its business or its effect which may affect investors' decision on the securities and or the price of the effect. While the principle of publicity is the activity of placing news about a person, organization or company in the mass media. In other words, publicity is the effort of the person or organization for its activities reported mass media.

[1]Article 2 paragraph (2) of Perkom Number 4 Year 2010.

[2]Article 127 paragraph (7) of Law Number 40 Year 2007..

[3]Pompe, Sebastian & Reksodiputro, Marjono.**Ikhtisar Ketentuan Pasar Modal**, The Indonesia Netherlands National Legal Reform Program (NLRP), jakarta,2010. Hal 856

From the above understanding can be seen there equation of the purpose between the principle of openness with the principle of publicity is to inform the business activities of a PT to the public. On the principle of openness applies to public companies regulated in Law Number 8 of 1995 on Capital Markets.If violation of the principle of transparency can then report to the Capital Market Supervisory Agency (Bapepam) as a body authorized by law to conduct supervision of capital market activities.

In exercising its authority, Bapepam is authorized to issue a regulation of bapepam. One of its regulations is the Decision of the Chairman of the Capital Market Supervisory Agency Number KEP-86 / PM / 1996 on Disclosure of Information Must Be Immediately Announced to the Public.[1]

In the regulation there is an obligation of PT to inform the public regarding the merger event.[2]

In the event of a violation of the principle of internal disclosure, then under the Capital Market Law, the parties to which the liability may be held shall be as follows:

1. Any party signing the registration statement.
2. Director and commissioner of Issuer.
3. Underwriter.
4. Capital Market Supporting Professionals.[3]

If it is related to the principle of publicity contained in article 133 of Law Number 40 Year 2007, violations of the principle of transparency may also be used to provide accountability for violations of the principle of publicity. But in this case can not be used generally to all PT who do merging.[4] Because in Law No. 40 of 2007 distinguish between open companies with closed companies. The provisions in the regulation of the chairman of Bapepam are only to open companies. Thus, in this case the violation of the publicity principle contained in article 133, if it is related to the principle of accountability openness can only be given to PT who *go public*.[5]

B. Third Party Legal Protection Analysis For Publicity Compliance Breach By PT Performing Merger

Legal protection is a matter of protecting legal subjects through applicable legislation and enforced implementation with a sanction. The protection of law can be divided into two: preventive[6] and repressive[7] law

[1] Article 3 paragraph (1) of Law Number 8 Year 1995.

[2] Material LossesThat is a real loss there is suffered by the Applicant. Immaterial loss that is a loss of benefits that may be accepted by the applicant in the future or the loss of loss of profits that may be received by the applicant in the future. In this case the losses suffered by the creditor sourced in the act against the law that has been done PT. As affirmed in Article 1365 of the Civil Code, in the event that a person commits an act against the law, he / she is obliged to pay compensation for his / her actions.

Evidence (bewijsmiddel) is a form of form and type that can be helpful in terms of giving explanations and explanations about a case problem to assist judge judgment in court. Thus, the litigants of the arguments of argument as well as the facts of the argument. In Hidden Civil Code, 1666 Civil Code, among others are:

1. Posts / letters;
2. Witnesses;
3. Conjections;
4. Recognition;
5. Oath.

It is considered authentic because the president of the District Court.

[3] Article 80 of Law Number 8 Year 1995.

[4] In article 133 of Law Number 40 Year 2007, there is no element stating that only companies in the form of open or closed PT are obliged to make announcement of merger of PT. So the provisions of this article shall apply to all companies in the form of PT.

[5] Go Public is the activity of offering of shares or other securities by issuers (companies) to sell shares or securities to the public based on the procedures regulated by Law number 8 of 1995 concerning the Capital Market.

[6] Protection afforded by the government with a view to preventing prior to the offense. It is contained in legislation with a view to preventing an offense and providing guidelines or restrictions in the conduct of obligations. In the protection of this preventive law, legal subjects are given an opportunity to file an objection or opinion before a government decision gets the form The purpose of prevention is to prevent the occurrence of disputes. The protection of preventive law is of great significance to governmental actions based on freedom of action because with the prevention of preventive law laws the government is encouraged to be cautious in making decisions based on discretion. In Indonesia there is no specific regulation on preventive legal protection.

[7] Repressive legal protection is the ultimate protection in the form of sanctions such as fines, imprisonment and additional punishment given in the event of a dispute or violation. The protection of prescriptive law aims to resolve disputes. The principle of legal protection of government action rests on the concept of recognition and protection of human rights because historically from the west, the birth of concepts of recognition and protection of human rights is directed to restrictions and The laying of public and government obligations. The second principle underlying the legal protection of governmental action is the principle of a constitutional state. In conjunction with the recognition and protection of human rights, the recognition and protection of human rights Humans have a central place and can be linked to the objectives of the rule of law.

protection. In the case of third party legal protection for violation of compliance of publicity principle by PT whose merging is repressive legal protection. This is because legal protection is provided to third parties after the violation of the provisions of the law.

Legal protection of third parties against violation of the principle of publicity relating to the legal certainty of a legislation. Penegulation of law requires legal certainty, legal certainty is a yustisiable protection against arbitrary action. In addition to government sanctions against violations of the principle of publicity in the merger of PT, the law is expected by the public to protect the rights and obligations of each individual in the real reality, with strong legal protection will materialize the general purpose of law: order, security, peace, prosperity , Peace, truth, and justice.

Legal protection in violation of compliance with the principle of merger publicity of the PT is protection in the form of an opportunity for third parties to file an objection to the existence of a new PT that has merged. But Law Number 40 Year 2007 does not explain who the third party granted the right to file an objection on the merger PT.[1] Therefore it is necessary to trace which parties are involved as third parties in the implementation of the merger of PT.

1. The Parties in the Implementation of the Merger of PT

In the implementation of the merger of PT involves between PT who merged with PT who accept the merger. Both parties have internal organs of PT representing PT to conduct merger of PT among others are directors[2] and RUPS[3]. In addition to the two parties who will merge there are other parties involved are the bank as a creditor and notary as the deed of the merger agreement PT.[4] Therefore it is necessary to explain the role of each party, to know which party is meant a third party in the Act of PT.

a. The Role of Directors In merger PT

The Board of Directors is given the authority to run the stewardship of PT in accordance with the intent and purpose of PT. In the merger of PT the director[5] plays a role in preparing the merger plan[6]. This is done by directors who will join or who will accept the merger. The Board of Directors also plays a role in representing the PT in signing the deed of agreement in the presence of a notary. In addition, directors are also given the task by PT to make an announcement in the newspaper that the PT has merged.[7]

So in this case the directors are responsible for the violation of compliance the principle of publicity in the merger of PT. Because in this case the directors who have an obligation to announce in the newspaper that there has been a new legal entity that was born through the process of merging PT. If the board of directors neglects or intentionally fails to fulfill the principle of publicity, then the board of directors may be required to perform such liability.

b**. The Role of RUPS In merger PT**

After the merger design has been completed by the board of directors and obtained approval from the board of commissioners, then the draft is submitted to the respective RUPS for approval. The RUPS is conducted

[1] In the elucidation of Article 133 of Law Number 40 Year 2007 regarding Limited Liability Company only states that the announcement is intended to inform interested third parties to know that the PT has been valid in juridical merger. No explanation of any third party intended by Law Number 40 Year 2007.

[2]In Article 1 Sub-Article 5 of the Law of the Noomor 40 Year 2007 concerning Limited Liability Company The Board of Directors is a competent corporate body and fully responsible for the maintenance of the Company for the interest of the Company, in accordance with the purposes and objectives of the Company and representing the Company, both inside and outside the court With the provisions of the articles of association.

[3]According to Article 1 Sub-Article 4 of Law Number 40 Year 2007 concerning Limited Liability Companies The GMS is an organization of the Company that has authority not granted to the Board of Directors or Board of Commissioners within the limits specified in this Law and / or the articles of association.

[4]Creditur is involved in the merger of PT if the joining PT or receiving the merger has a debt to the creditor According to article 92 paragraph 1 of Law No. 40 of 2007 said that the board of directors run the company's management for the benefit of the company and in accordance with the intent and purpose of the company.

[5]From this provision it can be concluded that the management of the company is the board of directors.

[6]In Article 123 of Law Number 40 Year 2007 in conjunction with Article 7 of Government Regulation No. 27/1998 concerning Merger, Consolidation and Takeover of Limited Liability Company: The Directors of the company that will join and who accept the incorporation shall prepare the draft of the merger.

[7] In Article 133 paragraph (1) and (2) it reads Article 133: 1. The Board of Directors of the Company that receives the Merger or the Board of Directors of the Company resulting from the Consolidation shall announce the results of Merger or Consolidation in 1 (one) Newspaper or more within 30 (thirty) days from the date of the entry into Merger or Consolidation. 2. The provisions referred to in paragraph (1) shall also apply to the Board of Directors of the acquired company.

by way of deliberation to reach consensus.[1] After the draft of the amalgamation obtains the approval of each of the RUPS, the design of the incorporation shall be set forth in a deed of incorporation made before the Notary.[2] So in this case, the GMS only acts as a party to approve or not merging PT.

c. The role of creditors in the merger of PT

The creditor is included as an interested party for the action of PT. It is because because it is known that the creditor has an important role in the life of PT. Because the process of capital in the broad sense in the PT not only rely on capital stock alone, but also includes loan capital provided by the creditor or derived from retained earnings, and other properties.[3]

In the merger of PT if any party has the capital derived from the loan creditor and the PT can be dissolved because of the merger, then the creditor as the lender of capital can be harmed if not knowing the existence of the merger of the PT. In this case the creditor as a third party because it is not directly involved in merging PT. Every PT that runs the Company must fulfill its obligations to a third party by using its capital and with that capital it also earns profit and / or profit.[4]

So in this case the parties who need legal protection for the fulfillment of the principle of publicity in the merger of PT is the creditor.

2. Legal Protection Against the Creditor

Legal protection of creditors in the merger of PT because one of the PT must disband and join into the PT who accept merger.Bubarnya one of the PT involves the creditor in it if the PT has a venture capital based on loan capital from the creditor. Dissolution of PT can be done through two ways namely liquidation and liquidation dissolution. Therefore it is necessary to know the position of creditor in liquidation dissolution and without liquidation. After that, any legal remedy that can be used by the creditor in case of loss of merger of PT.

a. The position of the creditor in the dissolution of PT caused by the merger of PT

Implementation of the merger of PT has legal consequences to the PT who merged into the PT who remain standing, due to the law is the PT who merged into a dispersed.[5] The dissolution of PT caused by the merger is done without any liquidation.[6] In the event that the dissolution is done without liquidation first then the PT's assets and liabilities are dissolved because of legal switch to PT result of merger, then in other words creditor receivable to PT which broke up switch because of law to PT result of merger.[7]

Therefore, the dissolution of PT as a result of the merger can be done without the need for any juridical transfer of assets and liabilities of the PT that merge to the merged PT. The problem is if it relates to the asset of a company in the form of immovable property (land) which result from the merger must be reversed into name on behalf of PT result of merger. In this case a regulation is required regarding the transfer of land rights.[8]

In Article 37 of Government Regulation No. 24 of 1997 the transfer of land rights must be registered[9], it also applies to the transfer of land rights that occurred because of the merger of PT. The transfer of land rights

[1]Article 87 Paragraph (1) of Law Number 40 Year 2007 requires that the GMS decision be taken based on deliberation to consensus. The explanation of this article states that "consensus for consensus" is the result of an agreement approved by the shareholders present or represented in the RUPS.

[2]Article 128 of Law Number 40 Year 2007 regarding Limited Liability Company

[3]Endah Retno Damayanti, **Perlindungan Hukum Bagi Kreditor Dalam Proses Merger Perseroan**, tesis, Fakultas Hukum Universitas Airlangga, Program Studi Magister Kenotariatan, surabya, 2003, hal. 15.

[4] Loc. Cit.

[5]Article 122 paragraph (1) of Law Number 40 Year 2007 regarding Limited Liability Company states that Merger and Consolidation resulted in a merging or merging company that ended due to law.

[6]Article 122 paragraph (2) of Law Number 40 Year 2007 regarding Limited Liability Company states that the termination of the Company as referred to in paragraph (1) occurs without liquidation.

[7] Article 122 paragraph (3) of Law Number 40 Year 2007 concerning Limited Liability Company states that In the event that the termination of the Company as referred to in paragraph (2): a. The assets and liabilities of the Company that merge or merge are transferred by law to the Company receiving the Merger or the Consolidated Company; b. Shareholders of the Company that merge or consolidate due to law to become shareholders of the Company receiving the Merger or Consolidated Company; and c. The merging or merging company expires because the law as from the date of Merger or Consolidation takes effect.

[8] Law Number 40 Year 2007 does not specifically regulate the assets in the form of land or immovable property, hence other regulation is needed in arranging the transfer of land that is Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP No 24 Year 1997).

[9] Article 37 paragraph (1) of PP. 24 Year 1997 reads: The transfer of land rights and ownership rights of apartment atassatuan through sale and purchase, exchange, grant, income in company and other law of transfer of rights, except the transfer of rights through the auction can only be registered if evidenced by deed made by PPAT authorized According to the prevailing laws and regulations. Article 43 paragraph (1) of PP. 24 of 1997 stipulates that the transfer of land rights,

due to incorporation may be registered under a deed that provides for the amalgamation after the merger has been authorized by the competent authority[1]. So if the right to the land is used as collateral to the creditor by the PT who broke up because of joining themselves, then automatically the PT who received the merger become the owner of the land rights that are used as collateral. Then the right to collect the puitang to PT who broke up to switch to the PT who received the Merger .

The same applies to the transfer of mortgages that constitute an accesoir on a particular receivable, based on a debt agreement of another receivable or agreement, then in case the receivables concerned are transferred to another creditor, the mortgage that guarantees it because of the law also changes to the creditor The. Based on the deed of switched receivable transfer, the transfers may be recorded in the land books and certificates of the relevant mortgage and the land titles and certificates of land rights which are pledged as collateral[2]. So it can be concluded that the dissolution of a PT because the merger led to the switched creditors receivable to the PT who received the merger despite the guarantee and so on.

b. Legal Efforts That Can Be Conducted By Creditors When Arising Loss Due To Infringement Fulfillment Publicity Principles By PT

The purpose of the announcement of the merger of PT in the newspapers is to provide protection to the creditors, because in the announcement it is notified that the debts of PT that have been disbursed and merged have been transferred to PT who accept the merger. But if the PT commits a violation of the fulfillment of the Principle then the PT may be deemed to have committed an unlawful act as described in the previous section. Therefore, for the offense, the creditor as a third party may be granted the right to file a remedy if it gives a loss to the creditor for the creditor's ignorance that the debt of PT has been transferred to another PT by violating the fulfillment of the principle of publicity.

Legal efforts that can be made by the creditor include the following:

1) Investigation of the Company on Creditor Demand

If the creditor feels aggrieved by the PT because PT has a bad intention of doing the act unlawfully by violating the provisions in the Act by default or intentionally not announcing the Merger of PT in the newspaper, then to protect the interest of the creditor may object to the violation. One of the attempts to file an objection for the violation is to submit a petition to the district court for examination of PT[3]. Such application may be made if the PT declines the request of data requested by the debtor.[4] The creditor submits the written application and the reasons to the District Court whose legal area includes PT.

The District Court may reject the creditor's application if it is not based on a reasonable cause or grant the request by issuing a determination for the examination and appointment of at least three experts to conduct

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management rights or property rights of apartment units due to merger or consolidation of companies or cooperatives that are not preceded by liquidation of companies or cooperatives that merge on merge can be registered under a deed that proves the existence of merger or consolidation of the company Or the cooperative concerned after the merger or consolidation is authorized by the Authorized Official in accordance with applicable laws and regulations. Article 16 Paragraph (1) of Law Number 4 Year 1996 concerning Land and Land-related Property Rights stipulates that if accounts receivable that are guaranteed by Mortgage right are transferred because of cessie, subrogation, inheritance, or other causes, the Right Dependents are joining the switch because of the law to the new creditors. Other causes are other matters besides the cessie, subrogation and inheritance, including in the event of a merger resulting in the shift of receivables from the original company which merged to the merger company. (Sutan Remi, Deposit Rights Principles, Basic Provisions And Issues Faced By Banking, Alumni, Bandung, 1999 Page 128)

[1]Article 43 paragraph (1) of PP. 24 of 1997 stipulates that the transfer of land rights, management rights or property rights of apartment units due to merger or consolidation of companies or cooperatives that are not preceded by liquidation of companies or cooperatives that merge on merge can be registered under a deed that proves the existence of merger or consolidation of the company Or the cooperative concerned after the merger or consolidation is authorized by the Authorized Official in accordance with applicable laws and regulations.

[2]Article 16 Paragraph (1) of Law Number 4 Year 1996 concerning Land and Land-related Property Rights stipulates that if accounts receivable that are guaranteed by Mortgage right are transferred because of cessie, subrogation, inheritance, or other causes, the Right Dependents are joining the switch because of the law to the new creditors. Other causes are other matters besides the cessie, subrogation and inheritance, including in the event of a merger resulting in the shift of receivables from the original company which merged to the merger company. (Sutan Remi, Deposit Rights Principles, Basic Provisions And Issues Faced By Banking, Alumni, Bandung, 1999 Page 128).

[3]Article 138 Paragraph (1) of Law Number 40 Year 2007 states that the Inspection of the Company may be carried out for obtaining data or information in the event of any suspicion that: a. The Company commits an offense against the law that harms shareholders or third parties; Or b. Members of the Board of Directors or the Board of Commissioners conduct unlawful acts that harm the Company or its shareholders or third parties.

[4]Article 138 Paragraph (4) of Law Number 40 Year 2007 states that the Application as referred to in paragraph (3) letter a is filed after the applicant first requests data or information to the Company in the GMS and the Company does not provide such data or information.

an examination of PT. The expert who has been appointed by the court has the right to examine all documents and assets owned by PT.[1]

After the expert has finished the examination, the expert[2] is requested to make a report on the result of the examination. Only to the head of the district court the result of the examination report on the company is submitted. Then by the head of the District Court will be given a copy of the examination report to the creditor and to the PT. The results of the examination may be useful to the creditor in finding evidence of whether or not there is any deviation in the merger of PT and may be used by the creditor as material to forward the case concerned, whether civil or administrative if it has fulfilled its elements.[3]

2) Filing Lawsuit to the District Court

The first step is to file a lawsuit by registering the lawsuit to the court. According to Article 118 paragraph (1) of the HIR, the registration of the lawsuit is filed to the District Court on the basis of its relative competence. The lawsuit should be filed in writing, signed by the plaintiff or his proxy, and addressed to the President of the District Court[4]. The registration of the lawsuit can be made at the local courts office of the District Court.

The creditor may file a lawsuit in writing in the form of a lawsuit to the District Court for violation of the fulfillment[5] of the principle of publicity carried out by PT. In a lawsuit containing the identity of the plaintiff. In addition to identity, in the letter of the suit also contains posita. Posita is also called the Fundamentum of Petendi, which contains a postulate that describes the relationship that is the basis or description of a demand.

To file a claim, one must first describe the reasons or propositions so that he can file such a claim. Therefore, the fundamentum of petendi contains a description of the incident or sitting matter of a case. What a creditor can use is to state in his / her position that PT has committed an unlawful act that is intentionally or negligently does not fulfill the principle of publicity as described above, which causes the creditor to incur a loss[6].

In the letter of claim also contains petitum which contains any claim that the plaintiff has requested to the judge to be granted. The creditor as the plaintiff may explain any claim of indemnification that the creditor has suffered due to a violation of the PT in the fulfillment of the principle of publicity. Such losses can be material and immaterial losses[7].

In this case the filing[8] of the lawsuit can be addressed to the board of directors of PT. Because the directors are authorized and fully responsible for the maintenance of the Company for the benefit of the Company, in accordance with the purposes and objectives of the Company and to represent the Company, both

[1]What is meant by an expert in the article is a person who has expertise in the field examined. The expert must be completely unrelated to the company so there will be no conflict of interest in performing his duties.

[2]Article 139 of Law Number 40 Year 2007 states that: 1. Chairman of the district court may refuse or grant the petition as referred to in Article 138. 2. The head of the district court as referred to in paragraph (1) shall reject the application if the petition is not based on a reasonable cause and / or is not done in good faith. 3. In the event that the petition is granted, the head of the district court shall issue a determination of inspection and appoint at most 3 (three) experts to conduct examination in order to obtain the necessary data or information. 4. Each member of the Board of Directors, members of the Board of Commissioners, employees of the Company, consultants, and public officers appointed by the Company shall be referred to in paragraph (3). 5. The expert referred to in paragraph (3) shall be entitled to inspect all documents and corporate claims deemed necessary by the expert to be known.

[3]Article 140 of Law Number 40 Year 2007 states that: 1. The report on the result of the examination shall be submitted by the expert as referred to in Article 139 to the chairman of the district court within the period specified in the determination of the court for examination no later than 90 (ninety) days after the date of such appointment. 2. The head of the district court shall provide copies of the inspection report to the concerned member of the Company within a period of no more than 14 (fourteen) years from the date of the report of the result of the examination.

[4]Namely the authority or power to hear cases from a district court in the green of the domicile of the area or place of the object, and the domicile of choice which has been determined in the agreement by the parties

[5]The letter of claim is a letter filed by the plaintiff to the Chief Justice authorized, which contains a claim of rights in which it contains a dispute and at the same time serves as the basis for the examination of the case and the verification of the right of a right.

[6] Anonymous, Posita, Petitum, Replik, Duplik,

[7] http://www.hukumonline.com/klinik/detail/lt50c454b656489/replik-duplik-posita-petitum accessed on 14 April 2017.

[8]Material LossesThat is a real loss there is suffered by the Applicant. Immaterial lossThat is a loss of benefits that may be accepted by the applicant in the future or the loss of loss of profits that may be received by the applicant in the future. In this case the losses suffered by the creditor sourced in the act against the law that has been done PT. As affirmed in Article 1365 of the Civil Code, in the event that a person commits an act against the law, he / she is obliged to pay compensation for his / her actions.

It is considered authentic because a copy of the inspection report is made by an authorized official, namely the President of the District Court.

inside and outside the court in accordance with the articles of association.In addition, directors are also given the law to fulfill the principle publsitas merger PT.

In the case of evidence that can be used by creditors to make compensation claims is a copy of the results of inspection reports that have been done by the creditor in the inspection stage of PT. Because the result of the report is an authentic written evidence in the prosecution[1]. The creditor may submit other evidences that can corroborate the claim. So that the evidence can support the creditor in winning the case.

Upon completion of the proceedings from the filing to the decision of the District Court, the lender may make further legal proceedings if the creditor still object to the verdict of the judge. These efforts include appeals, appeals and review.

Conclusion

1. Whereas sanction for violation of compliance of publicity principle conducted by PT which do merger can be related to sanction of violation contained in Number 4 of 2012 which is in the form of administrative sanction. Because the obligation of notification to KPPU is based on Article 133 of Law Number 40 Year 2007. In addition to the open PT regarding the sanction of violation of the principle of publicity compliance can be related to sanction of transparent principle violation contained in Capital Market Law.
2. Whereas the third party's legal protection for breach of the principle of publicity by PT conducting the Merger can be done by requesting the examination of the PT and also the creditor may file the lawsuit if there is a loss on the violation.

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[1]Evidence (bewijsmiddel) is a form of form and type that can be helpful in terms of giving explanations and explanations about a case problem to assist judge judgment in court. Thus, the litigants can only prove the truth of the arguments and arguments of argument as well as the facts which they present with certain types or forms of evidence. In civil procedure law the types of evidence are contained in article 164 HIR, 1866 Civil Code, among others are: 1. Posts / letters; 2. Witnesses; 3. Conjections; 4. Recognition; 5. Oath.