THE RESPONSIBILITY OF A LIMITED LIABILITY COMPANY WITH AUTHORIZED FICTITIOUS CAPITAL: EVIDENCE FROM THE EMERGING MARKET

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Abstract

The phenomenon of law related to the capital subscribed and fully paid up company is limited liability companies in Indonesia, many of which are not real. The aim of this research is to answer the question: “What is the legality and legal consequences of an establishment with a fictitious authorized capital?”. The research was conducted via the study of literature with this type of normative legal research supported by an empirical approach. The results of the research contribute to knowledge that the responsibility of a limited liability company with a capital payment basis is fictitious when the establishment does not essentially meet the validity of the establishment of the limited liability company itself, whether based on terms “materially” or “formally”. The terms “formally” depositing of the authorized capital must be issued and paid-up in full. Although the capital is fictitious or not real, if it has been approved by a legal entity, then it remains as a legitimate legal entity, but the substance of it is a limited liability company. Depositing the authorized capital which is not real contradicts the nature of the limited liability company as a legal entity.

Keywords: Law, Responsibility, Limited Liability Company

1. INTRODUCTION

Indonesia has introduced a limited liability company with a term naamloze venootschap abbreviated as NV. As stated by Widjaya (2003) most forms of business entities that can be found in Indonesia, now is the heritage of the past, namely the government of the Netherlands (Widjaya, 2003). Furthermore, he said that indeed some of them have been replaced with the designation of the Indonesian language, but there are also some which are still using its original name. The name that still continues to be used and has not been modified to use as maatschap, firms abbreviated as FA, and commanditaire vennootschap, abbreviated as CV. In addition, officially there is also a limited liability company that actually comes from the title, naamloze vennootschap (Widjaya, 2003). Title naamloze above in the sense of “without name” due to NV that has no name as a firm in general, also does not use one of the names of the members of the company (Ichsan, 1986).

The practice of everyday business is often found on a limited liability company. In fact, doing business by forming a limited liability company primarily for serious business is the model that is
most commonly used, so it is possible that the number of limited liability companies in Indonesia far exceeds other business entities, such as firms, limited partnership, cooperative, and others.

A limited liability company is also a form of business economic activity that is the most preferred at this time because of the limited accountability it also makes easy for the owners of its shares to divert to sell all of their shares (Widjaja & Yani, 2006). A limited liability company that has met certain requirements will be a legal entity, with a legal entity status that it can be bound to and perform the deeds of the law, as a private party and can have wealth or debt (Soemitro, 1993).

According to Prasetya (1996), the term of the limited liability company that is used in Indonesia is actually a mating between a term used in English law and German law. One of the parties is shown in terms of SERO or its shares, but at the same time on the other side is also shown in terms of responsibilities limited (Prasetya, 1996). A company, which has the status of a legal entity, has the properties and characteristics of different quality from the form of another business, known as a characteristic of a company, namely (Chatamarrasjid, 2000):
- as the association of capital;
- the wealth and debt of a limited liability company are separate from the assets and debt of the owner of the stock;
- responsible only for what is deposited, or liability is limited;
- is not responsible for the loss if limited liability exceed the value of the shares that have been taken.
- not personally responsible for commitments made on behalf of the company;
- the separation of functions between the owners of the shares and the board of directors;
- have a commissioner who serves as the superintendent;
- the highest authority is the general meeting of owners of shares (Annual General Meeting).

In accordance with the provisions of Law No. 40 of 2007 concerning Limited Liability Company, the capital structure of a limited liability company consists of the authorized capital, issued capital, and capital deposited. All capital must be loaded in the articles of association of a limited liability company. According to Article 32 of Law No. 40 of 2007 concerning Limited Liability Company:

(1) The authorized capital of the company shall be at least Rp 50,000,000,00 (fifty million rupiahs).

(2) Laws that regulate the activities of certain businesses can determine the amount of the Company's capital which is higher than the provision of authorized capital as referred to in paragraph (1).

(3) The change to the amount of the authorized capital as referred to in paragraph (1) shall be stipulated by government regulation.

More on Article 33 of Law No. 40 of 2007, determining that the:

(1) At least 25% (twenty-five percent) of the authorized capital as referred to in Article 32 must be issued and paid-up in full.

(2) The capital issued and paid-up in full as referred to in paragraph (1) shall be proven by valid evidence of payment.

As a comparison of the limited liability company law, namely Law No. 1 of 1995 regarding Limited Liability Company, about the basic capital, Article 25 specified the following:

(1) The authorized capital of the company shall be at least Rp 20,000,000,00 (twenty million rupiahs).

(2) Law No. 1 of 1995 or implementing regulations that regulate the field of a particular business can determine the minimum amount of the authorized capital of the company is different from the provisions referred to in paragraph (1).

More on Article 26 of the mentioned:

(1) At the time of the establishment of the company, at least 25% (twenty-five percent) of the authorized capital as referred to in Article 25 should have been placed.

(2) Any placement of capital as referred to in paragraph (1) must have paid at least 50% (fifty percent) of the nominal value of any shares issued.

(3) All shares that have been issued must be paid in full at the time of the ratification of the company with valid evidence of payment.

(4) The issuance of shares more each time must be paid-up in full.

We would like to draw the attention to the provisions of Law No. 40 of 2007 on the authorized capital specified in Article 32; at least 25% must be issued and paid-up in full. It is different from the provisions of Article 26 of Law No. 1 of 1995, which states that at the time of the establishment of the company, at least 50% of the capital base has been placed and at least 50% of the capital that has been placed should have been paid-up in full. When the entire issued capital has been paid by the owners of its stock, then it is usually expressed as a capital issued and fully paid.

The phenomenon of law in Indonesia related to the capital subscribed and paid-up in full, the lot done in a fictitious way, while according to the Law No. 40 of 2007 concerning Limited Liability Company, Article 33, paragraph (2) it shall be proven by valid evidence of payment. It is re-emphasized in Government Regulation No. 29 of 2016 on Authorized Capital of Limited Liability Company Amendment, Article 2:

(1) At least 25% (twenty-five percent) of the authorized capital of a limited liability company as referred to in Article 1 must be issued and paid-up in full as proven by valid evidence of payment.

(2) Valid evidence of payment referred to in paragraph (1) shall be submitted electronically to the Minister in Charge of Government Affairs in the Field of Law and Human Rights within a period of sixty (60) days from the date of the deed of establishment of a limited liability company signed.

Although the evidence of payment is valid, namely the existence of a slip of deposit of at least 25% of the authorized capital as referred to in Article 32 of Law No. 40 of 2007, which should be issued and paid-up in full, then evidence of payment is given to the notary to complete the requirements for establishing a limited liability company. However, what often happens in practice the authorized capital is not really issued and paid-up in full, but is soon withdrawn by the party who set up a limited liability company after providing proof of deposit of capital base to the notary. Thus, the submission of evidence of payment of the authorized capital issued and fully paid-up is just to complete the requirements for the
establishment of a limited liability company. This practice is just the same capital base of fictitious or not in real terms issued and paid-up in full. A gap like this is possible to happen throughout fuzzy or indecisive norm.

Based on that, of course, each person is likely to set up a limited liability company, although he/she actually does not have enough capital for it. Although it has been providing valid evidence of payment, any man can pull back the authorized capital issued and fully paid-up in a time not too long, i.e., after handing over the slip/proof of deposit to the notary. Of course, it is a gap that can be exploited for the people who actually do not have the capital by borrowing money from the other party then after getting the proof of deposit of capital to be immediately returned.

Before establishing a limited liability company it is also possible that there are no certain commitments or agreements among the founders in matters relating to the deposit of the authorized capital, the determination of stock prices, profit sharing as the loss. With respect to that at least some questions raise.

First, with regard to certain agreements among the founders in terms of determining the price of the stock after the authorized capital paid-up of the new specified share price or vice versa. Second, whether, after the limited liability company exists, stood with the other words, has been incorporated or after getting benefits of a new authorized capital paid under real terms. Third, how are profits distributed among the owners of the stock when the authorized capital is not paid under real terms? Fourth, what if the company suffered losses that are authorized capital paid-up fictitious or not real.

Of course, this state has legal effects after a limited liability company incorporated and doing business transactions, such as the ability of a limited liability company to run its business; the ability of a limited liability company to pay the debt to a third party. In addition, in the case of profit sharing or otherwise if there is a loss, while the authorized capital issued and fully paid-up is fictitious or not real, it can potentially cause disputes among the owners of the stock, while that can be proven the capital is expressly specified in the deed of establishment of a limited liability company.

An example of the practice of depositing the authorized capital issued and fully paid-up to be mentioned here is the establishment of a Limited Liability Company (PT) Indonesia Cahaya Media in 2020 and PT Riau Baru Indo Pers in 2015. Both of them stood after the entry into force of Law No. 40 of 2007 concerning Limited Liability Company. PT Indonesia Cahaya Media and PT Riau Baru Indo Pers focus on running the business field of media, printing, and suppliers, although based on the deed of establishment there is still a lot of other businesses that can be run by both the company.

PT Indonesia Cahaya Media in the deed of establishment put a capital of Rp 50,000,000,000 (fifty million rupiahs), of the authorized capital of the issued and fully paid-up Rp 50,000,000 (fifty million rupiahs). PT Riau Baru Indo Pers put the authorized capital of Rp 1,000,000,000,000 (one billion rupiahs), of the authorized capital of the issued and fully paid-up also Rp 1,000,000,000,000 (one billion rupiahs). The authorized capital issued and fully paid-up on the example of
liability company” which is followed by “The liquidation by the liquidator under the Law No. 40 of 2007. Prayoga and Profii (2020) once wrote an article titled “The dissolution of the limited liability company by the prosecutor’s office as an effort to strengthen national resilience”. Paying attention to the review of previous research mentioned above, it is clear that none of them has discussed the legal issues about the responsibility of a limited liability company with an authorized fictitious capital. Thus, this study is original so it will contribute to providing something new in the development of science. In connection with the phenomenon of what has been stated above the problem of this research is legal consequences for the limited liability company with an authorized fictitious capital.

As for the structure of the paper, it consists of a preliminary portrait of the legal issues under study in Section 1. Section 2 describes the relevant literature. Section 3 presents the methodology used to examine the issue of blurring the norm for depositing the authorized capital in the establishment of a limited liability company that poses practice fictitious. Section 4 discusses the related legal issues studied. Section 5 concludes the paper.

2. LITERATURE REVIEW

A major issue in corporate finance is how firms should determine their financing options to maintain going concerned and achieve goals. The relative importance of corporate financing sources and the capital structure depends on the company life cycle (Suyono, Yarram, & Riswan, 2017).

Capital is used by the companies to finance their assets, which in turn will generate revenue for the companies, resulting in profits earned. Capital is important for setting a new company or the continuing operations of an existing one (Chakrabarti & Chakrabarti, 2019). The capital structure represents a variety of ways through which enable a company to finance its activities (Olaniyi, Elelu, & Abdulsalam, 2015).

The capital structure decision is very crucial for any company to make for its survival. The company has to decide if it should use the external or internal resources of financing or both to fulfill the company’s objective. Moreover, this decision is of great importance for other users of financial information, such as shareholders, creditors, investors, regulators, analysts, and other stakeholders (Hamid, Abdullah, & Kamaruzaman, 2015).

The capital structure decision is crucial for any company to maximize shareholder’s wealth and deal with its competitive environment. It is one of the important factors that affect company performance. Although there are alternative capital structure theories that have been developed during past decades to resolve the optimal capital structure puzzle. Both the theoretical perceptions and the empirical studies reached diverse results concerning the influence of capital structure on company performance. Moreover, the empirical studies reveal that the impact of capital structure on a company’s performance depends on the measure of debt (Forte & Tavares, 2019).

3. RESEARCH METHODS

To conduct a research, the use of research methods is a step that must be taken, so results that are already selected can be missed for valid, reliable and objective, the authors develop the following research methods:

Type and research approach. This type of research is normative law research about the issue of blurring the norm of depositing the basic capital in the establishment of a limited liability company that raises the practice of fictitious capital payment basis. However, the research that is normative needs to be supported with the interview. That is, the type of this research is the joint research, namely the normative research as the main approach, while the interview (empirical) just as a support. The approach of this research consists of the approach of legislation, the historical approach, and the conceptual approach and the case approach.

The type and source of data. There are three data types in the normative law research, namely:

- Primary legal materials are the material laws contained in the laws and regulations that apply, such as Law No. 40 of 2007 concerning Limited Liability Company, as well as some other legislation which is closely related to the subject matter under study.
- Secondary legal materials provide an explanation for the primary legal materials that are sourced from doctrinal or opinions of experts contained in books as well as various scientific papers related to the research object.
- Tertiary legal materials give instructions and explanations to primary legal materials and secondary legal materials such as encyclopedias, journals, dictionaries, and so on.

And then because this research is combined as has been alluded to, it is supported by interviews as an approach to support the primary data obtained directly from the source of the two limited liability companies in the City of Pekanbaru, PT Indonesia Cahaya Media and PT Riau Baru Indo Pers with the director, and the commissioner of each of the limited liability company. More details about the state of the population can be seen in Table 1 below.

<table>
<thead>
<tr>
<th>No.</th>
<th>Population</th>
<th>Total population</th>
<th>Sample</th>
<th>Percentage (%)</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Director of PT Indonesia Cahaya Media</td>
<td>1</td>
<td>1</td>
<td>100</td>
</tr>
<tr>
<td>2</td>
<td>Director of PT Riau Baru Indo Pers</td>
<td>1</td>
<td>1</td>
<td>100</td>
</tr>
<tr>
<td>3</td>
<td>Commissioner of PT Indonesia Cahaya Media</td>
<td>1</td>
<td>1</td>
<td>100</td>
</tr>
<tr>
<td>4</td>
<td>Commissioner of PT Riau Baru Indo Pers</td>
<td>1</td>
<td>1</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Authors’ elaboration.
Data source: Ingredients of legal normative research as the main approach are obtained from the libraries either manually or online, while the primary data from the interviews as a supporting approach is obtained directly at the source.

Data collection techniques. Data collection the normative research as the main approaches carried out with the technical literature, which examines the sources of literature related to this study, such as legislation, books of law, the opinion of the scholars, and any other supporting materials that are relevant to the research, while primary data collection through interviews as the approach of supporting.

Data analysis. After the data is obtained then the data is grouped according to the subject matter, onwards processed then presented in the form of a sentence that is easily understood or incomprehensible. Then the data is analyzed in a holistic, diinterprestasi and juxtaposed way its relevance with the regulations of the applicable legislation, the opinions of scholars (doctrine) as well as the theories of other law.

4. RESULTS AND DISCUSSION

So a limited liability company may engage in business activities, then the limited liability company must have a wealth of own or in other words have capital. The capital of a limited liability company basically comes from the founders who have taken the stock with the obligation to deposit a sum of money equal to the value of the shares that have been taken of it. Hence on every stock listed the amount of money which is the nominal value of the shares. The whole of the amount of the value of these shares is a capital base of the limited company. The capital structure of a limited liability company according to the Law No. 40 of 2007 concerning Limited Liability Company, can be divided into basic capital, the issued capital, and paid-up capital.

As it has been known that according to Article 32 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Company has been determined unequivocally that a limited liability company must have a minimum authorized capital of Rp 50,000,000,00 (fifty million rupiahs). Then the capital, at least 25% (twenty-five percent) should be issued and paid-up in full, as stated in Article 33, paragraph (1).

Things contained in the limited liability company act are very important, it means for existence, survival and development of the company limited as the organization of the economy, because capital is a means to achieve a profit that will be distributed to the owners of the shares in the form of dividends.

The question is how depositing the authorized fictitious or not real capital against a limited liability company was reviewed according to Law No. 40 of 2007 concerning a Limited Liability Company? This question is because the provisions of Law No. 40 of 2007 concerning Limited Liability Company opened a crack occurrence depositing the authorized capital issued and fully paid-up done for a fictitious or not real when depositing the authorized capital of the parts of the validity of the establishment of the company.

The validity is meant to meet the requirements for establishing a limited liability company legally either materially or formally. Materially, a limited liability company as the subject of law according to Widjaja (2008a) includes some of the following:

- A collection or association of capital (which is intended to drive economic activity and/or other special purposes).
- The collection of this capital can do the deeds of the law in the relations of the law (it is precisely this which is the goal of the nature and existence of the legal entity), and therefore can be sued or sue in a court of law.
- Capital collected this always cater for the interests of certain, based on the provisions of laws and regulations that govern them. As a collection of capital, then the collection of such capital should be used for and in accordance with the intent and purpose of which is fully regulated in the statutes or articles of association, which is made according to the regulations of the applicable legislation.
- The collection of this capital has a board that will act to represent the interests of the legal entity, which should be in accordance with the intent and purpose of the collection of this capital, which means the separation between the existence of assets registered in the name of a collection of this capital with the management of his wealth by the board.
- The existence of the capital of the legal entity is not associated with specific membership. Any person who meets the terms and requirements stipulated in the articles of association can become a member of the legal entity with all the rights and obligations.
- Its membership is not permanent and can be diverted or transferred to anyone else, despite the existence of the legal entity itself is permanent or not is restricted to a period of the establishment.
- Responsibility of a legal entity is distinguished from the responsibility of the founders, members, or administrators of such legal entity.

The opinion that the substance also was stated by Purwosutjipto (1982), a limited liability company can be called as a legal entity if filled with some terms of material, namely:

- Its assets separate (rights) with a specific purpose separate with personal wealth among the members or allies or the owner of the stock and the agency concerned. He said there is a separation between the wealth of the agency or corporate and private wealth members or allies or the owner of the shares.
- There are interests that became the goal of the agency concerned.
- The presence of some people who became the caretaker of the agency.

In addition to the requirements of the material, the existence of the limited liability company as the subject of the law of itself should also be based on the requirements of the formal, i.e., the formation process must meet the formalities of such laws and regulations that govern them. Purwosutjipto (1982) said the terms of the formal is the recognition of the state or a law that stated that the agency is a legal entity. The terms “formally” to establish a limited liability company according to the Law No. 40 of 2007 must meet the following elements:

- The recognition of the state or a law that stated that the agency is a legal entity.
the deed of establishment was made in the form of a notarial deed;
- the deed of establishment was made in the Indonesian language;
- must be at least founded by two people or a legal entity that is competent and authorized to act in the law as the founder;
- the name of the company must follow the rules that have been determined;
- capital payment must be in accordance with the rules that have been set;
- must be submitted to the Minister of Law and Human Rights within the period of 60 days from the signing of the deed of establishment for approval.

Obtaining approval by the Minister of Law and Human Rights that is what makes the limited liability company a legal entity in the sense of formal, as outlined in Article 7 paragraph (4) of Law No. 40 the Year 2007. After getting approval from the Minister of Law and Human Rights, then the limited liability company is to gain status as a legal entity. A limited liability company that has fulfilled the formalities of such laws and regulations, will be subject to the law and the relationship between the founders is no longer a contractual relationship, the founder as the owner of the stock no longer is personally responsible for the engagement made by the company and shall not be liable for losses of the company exceed the value of the shares that have been taken. The possibility of annulment of the limited liability if it is proved that occurs the intermingling of assets of the private owners of the shares and assets of the company so that the company is solely founded as a tool to fulfill the purpose of the private owners of stock (Budiarto, 2009).

A limited liability company stands or exists solely because of an agreement by two or more persons with the official deed or notarial deed. Because of the stand-by agreement, of course, at least there should be two people who made the agreement. In this regard, the Law No. 40 of 2007 consistently maintain the composition of the two people, as stated in Article 7 paragraph (5) and (6), which reads as follows:

(5) If after the Company obtains its legal entity status and the number of shareholders becomes less than 2 (two) persons, then within the period of not later than 6 (six) months as from such condition, the relevant shareholders is obliged to transfer part of their shares to other persons or the Company shall issue new shares to other persons.

(6) In the event that the time period as referred to in paragraph (5) has exceeded, and there is still less than 2 (two) shareholders, the shareholders shall be personally liable for all agreements/legal relationship and the Company’s loss, and upon the request of the interested party, the District Court may wind up the Company.

Thus, in the event that after the company obtains its legal entity status and the number of the owners of the stock is less than two people, then within a period of six months as from such condition, the owner of the stock is obliged to transfer some shares to other people and if after the time period of six months has exceeded, the owners of the shares remained less than two, then the owner of shares held personally responsibility for any engagement or loss of the company and upon the request of the interested parties, however, in the particular case, not a closed set that incorporation is, the state court can dissolve the company. Here it appears that the legislation does not allow the company to be located on the one hand, if this is breached, the sole shareholder will be personally liable to a third party, although the company has legal status.

Depositing the authorized fictitious or not real capital in the establishment of a limited liability company verily did not meet the validity of the establishment of the limited liability company, whether pursuant to the terms of material and formal prescribed by Law No. 40 of 2007 concerning Limited Liability Company.

Relating to the authorized capital of a limited liability company, terms of formulunya depositing capital base must be in accordance with the rules that have been set according to the provisions of Article 33 of Law No. 40 of 2007, determining that:

(1) At least 25% (twenty-five percent) of the authorized capital as referred to in Article 32 must be issued and paid-up in full.

(2) The capital issued and paid-up in full referred to in paragraph (1) shall be proven by valid payment evidence.

Under these provisions, the intent of fully paid and evidenced by valid payment evidence required by the parties will establish a limited liability company, that in the real/honest way will do what is outlined in the legislation. Not just a mere formality, because the authorized capital becomes a means for the limited liability company to be able to run a business or business activity after the limited liability company gets the approval of the legal entity. Of course, if the formal requirements are not substantially met, or in other words, designed, then the founder of the limited liability company is only just a name, without having the wealth real for running the business after a legal entity.

Then, depositing the authorized fictitious or not real capital in the establishment of a limited liability company also does not meet the validity of the establishment of a limited liability company under the terms “materially”. The terms “materially” related to the capital in Purwosutjipto’s (1982) opinion is one of them is a property (rights) which is separated for a specific purpose from personal wealth between the members or partners or shareowners of the limited liability company. He said there is a separation between the wealth of the agency or corporate and private wealth members or allies or the owner of the shares. In other words, the required capital that is collected always cater for the certain interests, based on the provisions of the legislation set should be real to be placed and paid-up in full is not solely based on valid evidence of payment. The authorized real capital can indeed be used by a limited liability company with the wealth separated. Then the collection of such capital should be used for and in accordance with the intent and purpose of which is fully regulated in the statutes or articles of association, which is made as per the regulations of the applicable legislation. The collection of this capital has a board that will act to represent the interests of the legal entity, which should be in accordance with the intent and purpose of the collection of this capital, which means the separation between the existence of
assets registered in the name of a collection of this capital with the management of the wealth by the board.

Usman (2004) argued, a limited liability company is different from a fellowship, that is not a legal entity, and is not separate from the allies who were members of that fellowship. The company is a legal entity distinct and separate from the owners of shares of the limited liability company (Usman, 2004). The nature of the limited liability company as a "legal entity" gives a guarantee to the company's creditors over the assets of the company, because the company’s assets are actually owned by the company and shall be borne by the company on the debt of the company. The company’s assets also cannot be withdrawn by the owner of the stock and assets of the company can not be guaranteed debt of the owner of the shares of the company (Usman, 2004).

The above opinion is associated with depositing the authorized fictitious or not real capital, like pulling the authorized capital which is issued and paid-up in full after giving evidence of payment in order to complete the requirements for establishing, by itself not in accordance with the nature of the limited liability company as a "legal entity". Thus, the deposit of fictitious or non-real capital can be said to not meet the legality of the establishment of a limited liability company according to both the formal requirements and material requirements as stipulated in Law No. 40 of 2007. Even though the limited liability company has been formally approved by a legal entity, the nature of a limited liability company established by engineering essentially violates the formal and material requirements.

Next, after depositing the authorized fictitious capital it does not meet the validity of the establishment of the limited liability company, either according to the terms "formally" or the terms “materially” specified in Law No. 40 of 2007, the legal consequences after the limited liability company is a legal entity will be further discussed. Limited liability company whose capital is essentially fictitious when it was founded, but has been approved by the legal entity, the legal consequences of a limited liability company, it was still regarded as a legitimate legal entity, all the limited liability company was not dissolved. Not fulfilled the terms of material and the formal establishment of a limited liability company regarding the capital base, the only result in the ability of the limited liability company is running the business, because it is basically a limited liability company that does not have capital.

The establishment of a limited liability company is expected to provide a positive impact on the lives of the economy. Absori (2006) said the positive impact of the establishment of a limited liability company:
- increase the productivity of the economy and can be the development of national and area;
- absorb new workers;
- provide revenue for the government from the payment of taxes.

A limited liability company that does not have the capital resulted in the ability of the limited liability company to run the business so that the positive impact of the establishment of the limited liability company can not be achieved.

Completing the above reasons, here the authors pointed out how PT Indonesia Cahaya Media and PT Riau Baru Indo Pers run their business activities, though, the companies do not have real wealth.

According to the Commissioner of PT Indonesia Cahaya Media, in accordance with the deed of establishment, the business activities of private news agencies, the press and media, or press companies, information and communication, web portals and/or digital platforms and other publishing activities can be run.

The current focus of the business activities carried on by PT Indonesia Cahaya Media, within the field of media services. At the time of the establishment of PT Indonesia Cahaya Media, the founders or owners of the shares do not have real capital. So to run the business-focused activities, one of the owners of stock in private mortgage his personal asset to obtain capital. After we got the order and payment, the loan is returned and the collateral redeemed back. If there is the rest of the results of operations or earnings after the loan is returned, then the profit was instantly taken by the owner of the stock personally. The company is just used as a means to get the job/order in the field of the media, if there is a profit or a loss into a personal gain or personal losses of the owners of the shares is not the name of the company. This is because PT Indonesia Cahaya Media does not have a real capital, separate from the personal wealth of the owner of its shares.

Then PT Riau Baru Indo Pers is not essentially a different business activity that can be operated with PT Indonesia Cahaya Media, where according to the deed of establishment there are several businesses that can be run. But, according to the Commissioner of PT Riau Baru Indo Pers, “up until this moment PT Riau Baru Indo Pers, just run the business field, namely the field of print media”. More the Commissioner of PT Riau Baru Indo Pers, explains:

“According to the focus of the activities of a business carried on by PT Riau Baru Indo Pers, the field of print media because it is actually PT Riau Baru Indo Pers has no real capital. Then to finance or capitalize job on order obtained by PT Riau Baru Indo Pers, one of the owners of stock in private mortgages its assets to the other party to obtain capital. After the print media got the payment, then the loans of the other party were returned to redeem the collateral. If there’s the rest of the results of operations or earnings after the loan is returned, then the profit was instantly taken by the owner of the stock personally. That is, the company is only used as a means to get the job/order, if there is a profit or a loss into a personal gain or personal losses of the owners of the shares, then it is not the name of the company. This is because the PT Riau Baru Indo Pers does not have a real capital, separate from the personal wealth of the owner shares”.

Taking into account the above-mentioned information, establishment with a fictitious or not real capital base turns out to be for the company in terms of the ability to run its business, as the example of PT Indonesia Cahaya Media and PT Riau Baru Indo Pers, are just used as a means to get
the job/order in the field of print media where capital is not derived from the company’s assets but rather the private property of one of the owners of the shares.

Whereas the company already passed into the legal entity, a legal entity separate from the owners of its shares, the company in performing the function of the law is not acting as a power of attorney from the owner of the shares but for and on behalf of itself, such as in the activities of the business of the print media that is run by PT Indonesia Cahaya Media and PT Riau Baru Indo Pers.

Where PT Indonesia Cahaya Media and PT Riau Baru Indo Pers get capital when conducting business activities in the field of print media, although the mechanism of gaining capital in the above-mentioned ways, but each of the limited liabilities that by law must act for and on behalf of itself, as a legal entity already approved.

One of the owners of the shares of PT Indonesia Cahaya Media and PT Riau Baru Indo Pers is not in accordance with the provisions outlined in the Law No. 40 of 2007 which establishes the limited liability company is a legal entity, and in accordance with the characteristics as a legal entity. As Widjaja (2008a) said that a limited liability company basically has the traits of at least:

- has legal status in itself, i.e., as a legal entity, that is subject to the law of artificial, deliberately created by the law to establish the economic activity, which is equated with the human individual, a natural person;
- has wealth of its own that is recorded in his name, and accountability itself over every action, deed, including the agreement that was made. This means the company can tie itself in one or more of the engagement, which means making the company the subject of the law of itself that has the capacity and authority to be able to sue and be sued before the courts;
- no longer imposes a responsibility to the founder, or owner of the shares, but only for and on behalf of itself, for the loss and the interests of her own;
- ownership is not dependent on certain individuals who is the founder or owner of the shares. Every time the company’s shares can be transferred to anyone, according to the provisions stipulated in the articles of association and applicable law at any given time;
- its existence is not restricted period of time and is no longer connected with the existence of the owners of its shares;
- accountability is absolutely limited, during and throughout the board (of directors), the board of commissioners, and/or the owner of the stock is not in breach of the things that should not be done.

One of the fundamental characteristics of a limited liability company is the nature of the legal entity and limited liability of the limited liability company. That is, the losses or profits faced by PT Indonesia Cahaya Media and PT Riau Baru Indo Pers, are the absolute liability of the company as a legal entity. Actually, the way that is done by one of the owners of stock in the name of his personality on the company is at risk of legal, because the services business media, printing, and suppliers who do remain in the name of the company, so that the profit or loss for the law belongs only or the burden of the company. Commitment in the behind-the-scenes performed by one of the owners of stock in the name of a private limited liability company that, if denied, the company will complicate one of the owners of such shares.

Vice versa, if a limited liability company suffered a loss or facing any legal issue with other parties, such as being sued over the implementation of the work of the services offered then keep the party limited liability company acting for and on his behalf and responsible in accordance with the provisions outlined in the act as a legal entity that is independent, while one of the owners of stocks to capitalize could not personally be associated or does not have a legal relationship, to be drawn in the issue of that law.

This is because the limited liability company is the body of law in which the legal entity is an agency or association that can have rights and do act like a human, and has a wealth of its own, it can be sued or sue in front of the judge (Subekti, 1987). Soemitro (1989) said that the legal entity is an entity that can have the property, rights, and obligations of such a person.

Furthermore, Prodjodikoro (1996) expresses the sense of a legal entity as an entity that is in addition to the human individual are also considered to be acting within the law and who has the rights, obligations, and legal nexus to another person or other entity.

From the formula above it is clear that the legal entity as a subject of the law of self-equalized before the law by a private individual natural person, although it can be disabled rights and obligations themselves, regardless of the people who founded or become a member of such legal entity, it is not one hundred percent partner with a private individual or individuals. Legal entity simply equated with individual private individuals, in the field of the law of the objects of the law of the engagement, as well as other laws that are part of the further development of both types of the law, which is also known with the name of the law of property. Furthermore, because the legal entity is in the field of the law of wealth, then the legal entity the same as a private individual, can sue or be sued in order to meet the agreement created. Material which is owned by a legal entity that is dependent on the fulfillment of the obligations of the legal entity itself (Widjaja, 2008b).

Private owners of the stock use the name of the company as conducted by PT Indonesia Cahaya Media and PT Riau Baru Indo Pers for the law will not be recognized, the advantages and disadvantages legally equally the responsibility of the company. Because the owners of the shares are not a party of the agreement created by a limited liability company with the other party. Therefore, the owners of the shares are not entitled to any of the agreements. In contrast, no third party can collect or sue the limited liability company upon the legal obligations of owners of shares of the company. Then the owner of the stock was also not entitled to charge third parties for obligations that must be paid to the owners of shares of the company (Widjaja, 2008a).

All that as a consequence of a legal entity according to Khairandy (2009) association incorporated has a wealth of its own. Formally the owner of the stock when establishing the company had separated part of his fortune to be
deposited into the company as stated in the deed of establishment of the company, including if there is a change thereto, paid-up capital of the founder of the company is to be the wealth of the beginning of the company (Khairandy, 2009).

In line with that Usman (2004) posited as between the owner of the stock and the company are parties to separate. The owners of the stock could not be required to pay off the debts of the company, although they are the owners. Because the previous owner of the stock already held a treaty whose contents that each party has separated or partially release the wealth of his personal property into a wealth limited liability company separated from the wealth of his private property. With the separation of the property of the owner of the shares and the property of a limited liability company, the responsibility of the owners of the shares is only on the property of her personal, which has been included on the limited liability company. In other words, the owners of the stock are not obligated to repay the debts of a limited liability company if the sale of assets of a limited liability company is still not sufficient (Usman, 2004).

PT Indonesia Cahaya Media and PT Riau Baru Indo Pers are just used as a means to get the job/order in the field of print media, printing services, and suppliers in which capital is not derived from the wealth of the company but the personal property of one of the owners of its shares in addition to not in line with the provisions outlined in the legislation also has an impact on the violation of other laws. It is revealed from the state of PT Indonesia Cahaya Media and PT Riau Baru Indo Pers itself. Objectively obtained information is as follows:

“The establishment of a limited liability companies, PT Indonesia Cahaya Media and PT Riau Baru Indo Pers, do not have a real capital base. The companies were only used as a means by owners of capital to a personal interest in the behind-the-scenes in order to get a job/order in the services of print media, printing, and supplier with using the name of the company. More than that, the establishment of the companies prepared in order to follow the auction/tender, that one of them is a companion where you can win one of the companies that does not exist to run the business. Things like that can be done by anyone” (authors’ observation).

Based on the above information, then the establishment of the limited liability company does not necessarily have a positive impact on the economy and the construction of national and local, yet also absorb new workers, even not necessarily also provide revenue for the government from the payment of taxes.

With regard to not necessarily provide revenue for the government from the payment of tax, it can be stated that in order to avoid the obligations of the magnitude of the payment of the tax, then the company can provide a report spending more than on profit/profit, so say the director of PT Indonesia Cahaya Media and the director of PT Riau Baru Indo Pers.

Based on the analysis above, to establish a limited liability company in accordance with the provisions of Law No. 40 of 2007 there is a gap for those who do not have real capital to establish the company, it turns out risky on the violation of another law, which is not in accordance with business ethics. Because according to the state of PT Indonesia Cahaya Media and PT Riau Baru Indo Pers, there is even the possibility for a limited liability company to be utilized by anyone who has the capital to the private interests of the company as a means for personal gain. In the field of procurement of printing, mass media, and suppliers, there is a risk of the occurrence of violations in terms of unfair competition in the implementation of the tender. This gives the chance of the occurrence of the crime business, as Lebrine (2010) said business crime can be detrimental to the rival firms (competitors), as the competition is not healthy, monopolistic practices, organized a conspiracy about the price or the area of marketing.

The ethics of business should be a commitment to be noticed and held in high esteem by every business, so positive impact on development, economy, and welfare. In line with the consideration of the Law No. 40 of 2007 concerning Limited Liability Company, it can be observed in the General Provisions of the explanation article by article of the Law No. 40 of 2007 concerning Limited Liability Company, which states: “the development of the national economy organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainable and environmentally sound, self-reliance, as well as keep a balance between progress and national economic unity aims to realize the welfare of the community... and so on”.

5. CONCLUSION

A limited responsibility company by depositing the authorized fictitious or not real capital, in fact, do not meet the validity of the establishment of the limited liability company, whether based on terms “materially” or “formally”. The terms formula of depositing capital base must be in accordance with the rules that have been established, which at least 25% (twenty-five percent) of the authorized capital must be issued and paid-up in full and proven by valid evidence of payment, should be in a real state. Then terms of material capital such a basis in real terms should be used a limited liability company and really wealth separated. One of the fundamental characteristics of a limited liability company is the nature of the legal entity which is accountable limited. Actually, the way that is done by one of the owners of stocks with the commitment behind the scenes related to the fictitious capital at risk law, so that the profit or loss for the law belongs only or the burden of the company. The commitment behind that screen, if denied, the company will complicate one of the owners of such shares. Because previously, the owner of the stock already held agreements the contents of which each party has separated or released some of their personal assets become the property of a limited liability company that is separated. With separated property of the owners, the shares and the property of a limited liability company, the responsibility of the owners of the shares is only on the property of her/his personal, which has been included on the limited liability company. Depositing the authorized capital which is
not real does not preclude the validity of the establishment of the limited liability company, but the simplicity of setting up a limited liability company at risk for crime business, such as monopoly, unfair competition evade the payment of tax, then it is recommended that government should pay attention to the ease of establishing a limited liability company turns at risk for crime business and it to be immediately overcome with narrow it down by doing the updated law in the field of a limited liability company.

REFERENCES