

Receivables Review of Affiliated Companies Between Parent and Subsidiaries and Subsidiaries and Subsidiaries

Tri Ratnawati¹, Hedy Widiastoeti²

triratnawati@untag-sby.ac.id, hwidiastoeti@gmail.com

Faculty of Economics and Business, University of 17 Agustus 1945 Surabaya

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ABSTRACT

This study aims to understand the events that often occur in affiliated companies, the relationship between the parent company and its subsidiaries and the relationship between the subsidiary company and its subsidiaries related to affiliated debts and receivables. The phenomenon of payables and receivables of affiliated companies often occurs due to the special relationship between the parent company and its subsidiaries and the subsidiary company and its subsidiaries are often related. This research has studied various methods of preparing financial statements for affiliated companies by recording consolidated financial statements, compiling financial statements and resolving affiliate debt problems using the Debt to Equity Swap method.

The target of this research is business entities which are affiliated companies, namely those that have a relationship between the parent company and the subsidiary company, and between the subsidiary company and the subsidiary company. The results of this study can consider the types of debt and receivables that occur between the Parent Company and Subsidiaries, so that a debt to equity swap is appropriate for a debt to equity swap is the receivables incurred for the Parent Company on loan funds for the operations of the subsidiaries because there has been a deposit of funds.

Keywords: *Debt and Receivable, Affiliation, Parent Company, Subsidiary Company, Debt to Equity Swap*

INTRODUCTION

The legal relationship between the parent company and its subsidiaries, and the responsibility of the parent company as the guarantor of the debts of its subsidiaries in the event of a default in a credit agreement. The problem that occurs is that the provisions regarding the legal relationship between the parent company and its subsidiaries within the group company have not been regulated clearly and carefully, thus creating a legal problem when the subsidiary enters into a credit agreement with the bank. The problem is the legal relationship between the parent company and the subsidiaries in the group company and to find out the responsibility of the parent company as the guarantor when the subsidiary is in default in the credit agreement. The normative legal research method uses a statutory approach and a conceptual approach. The legal relationship between the parent company and the subsidiary has an independent position, where the parent company is the shareholder of the subsidiary. When a subsidiary is in default in its credit agreement, the parent company as the guarantor can be held liable in accordance with the agreement that has been agreed with the bank.

In the business world, many companies are formed in the form of limited liability companies. To develop it there are times when the company forms a subsidiary, thus making it a single entity in a group company. The existence of group companies in Indonesia has not yet become a justification for the need for legal recognition of the status of group companies with other legal entities. The laws and regulations only regulate the relationship between the parent company and do not regulate group companies. Group company refers to the business reality of combining companies to form a group company as an economic entity.

Undang – Undang Perseroan Terbatas Number 40 year 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT) does not make group terminology referring to group companies. This is different from the old Company Law, namely

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Law Number 1 year 1995 concerning Limited Liability Companies which is implied in Article 56 letter b which states that the combined balance sheet of companies that are incorporated in one group. The Company Law is more focused on the legal basis of the company, the framework for regulating the relationship between the parent company and subsidiaries that are incorporated in group companies that still use a single company approach. This UUPT still maintains juridical recognition of the legal entity status of the parent company and its subsidiaries as independent legal subjects so that legally the legal entities of the parent company and its subsidiaries are still recognized and have the right to carry out their own legal actions. The inclusion of a subsidiary in the construction of a group company does not eliminate the juridical recognition of the legal entity status of the subsidiary as an independent legal subject, therefore the subsidiary can take legal actions for the subsidiary itself which can be in the form of an agreement or binding with a third party. Subsidiaries acting as independent legal subjects may enter into engagements with other parties. The inclusion of a subsidiary in the construction of a group company does not eliminate the juridical recognition of the legal entity status of the subsidiary as an independent legal subject, therefore the subsidiary can take legal actions for the subsidiary itself which can be in the form of an agreement or binding with a third party. Subsidiaries acting as independent legal subjects may enter into engagements with other parties. The inclusion of a subsidiary in the construction of a group company does not eliminate the juridical recognition of the legal entity status of the subsidiary as an independent legal subject, therefore the subsidiary can take legal actions for the subsidiary itself which can be in the form of an agreement or binding with a third party. Subsidiaries acting as independent legal subjects may enter into engagements with other parties.

In the engagement, if the subsidiary cannot fulfill its performance, it can result in default. Default is the implementation of obligations that are not timely, carried out inappropriately. To avoid this, the guarantee plays a very important role as a guarantee that the default by the debtor does not harm the creditor himself.

In general, guarantees given by debtors to banks are in the form of material guarantees. The material guarantee itself is regulated in Pasal 1131 and Pasal 1132 of the Kitab Undang Undang Hukum Perdata (hereinafter referred to as the Undang Undang Hukum Perdata). In practice, sometimes banks require debtors to add individual guarantees (borgtocht) in providing credit. The addition of individual guarantees (borgtocht) is carried out because the bank feels that material guarantees are not enough and are not safe, so that it can result in the bank not getting back all of its receivables, if in the future the debtor cannot pay off the debt. In this case, individual guarantees (borgtocht) can be carried out with guarantees.

In some literature, individual guarantees and company guarantees are not clearly distinguished, because if viewed from the nature of the guarantees, they are classified as individual guarantees, namely the existence of a third party who guarantees to fulfill the debt when the debtor defaults. The definition of guarantee is confirmed in Pasal 1820 of the Undang Undang Hukum Perdata which states that: "Guarantee is an agreement in which a third party, for the benefit of the debtor, binds himself to fulfill the debtor's commitment when this person himself does not fulfill it."

The guarantor/guarantor in a credit agreement is only *accessoir*, so it only applies when the debtor cannot fulfill his achievements. Normative legal research is a process to determine a rule of law, legal principle, and legal doctrine to answer the legal problems faced. The approach used in this research is a statutory approach and a conceptual approach.

LITERATURE REVIEW

Based on the Undang – Undang Perseroan Terbatas Number 40 year 2007 (UUPT) concerning Limited Liability Companies regarding the addition of capital, namely:

1. The addition of the Company's capital is carried out based on the approval of the GMS.
2. The GMS may delegate authority to the Board of Commissioners to approve the implementation of the GMS resolutions for a maximum period of 1 (one) year.
3. The decision of the GMS to increase the authorized capital is valid if it is carried out by taking into account the requirements of the quorum and the number of votes in favor of the amendment to the articles of association in accordance with the provisions of this Law and/or the articles of association.
4. The decision of the GMS to increase the issued and paid-up capital within the authorized capital limit is valid if it is made with a quorum of attendance of more than 1/2 (one half) of the total number of shares with voting rights and approved by more than 1/2 (one half) of the total number of shares with voting rights. the total number of votes cast, unless specified greater in the articles of association.
5. The increase in capital must be notified to the Minister to be recorded in the Company register.

6. All shares issued for additional capital must first be offered to each shareholder in proportion to the share ownership for the same share classification.
7. Shares that will be issued for additional capital are shares whose classification has never been issued, those who have the right to purchase first are all shareholders in accordance with the balance of the number of shares they have.
8. The offer does not apply in the event of the issuance of shares:
 - a. Addressed to the Company's employees;
 - b. Addressed to holders of bonds or other securities that can be converted into shares, which have been issued with the approval of the GMS; or
 - c. Conducted in the context of reorganization and/or restructuring that has been approved by the GMS.
9. Shareholders do not exercise the right to purchase and pay off the shares purchased within a period of 14 (fourteen) days from the offering date, the Company may offer the remaining shares that are not subscribed to a third party.

The relationship between the parent company and its own subsidiaries can be explained as follows.

1. Parent Company Ownership of Subsidiary Shares

The parent's ownership of a significant number of subsidiary shares gives the parent company the authority to act as the central leader controlling the subsidiaries as a unit of management. Ownership of shares in a subsidiary gives the parent company voting rights to control the subsidiary through various existing control mechanisms, such as the general meeting of shareholders.

2. General Meeting of Shareholders (GMS)

The parent company has the authority to control subsidiaries through the mechanism of the subsidiary's GMS. In the GMS of the subsidiary, the parent company can determine strategic matters that can support the achievement of the group company's goals as an economic unit, among others through the determination of the company's long-term goals in the form of a five-year business plan known as a strategic plan. In this strategic plan, the directors of the parent company determine the company's basic policies consisting of the company's vision, mission, culture, and strategic goals. This basic policy of the parent company is followed by all subsidiaries in preparing the long-term plans of each company.

3. Placement of Members of the Board of Directors and/or Board of Commissioners of Subsidiaries

Through ownership of the shares of a subsidiary, the parent company has the authority to assign members of the board of directors and/or board of commissioners of the parent company to concurrently serve as directors or commissioners of the subsidiary. The placement of the parent company in the subsidiaries is a form of indirect control over the operational activities of the subsidiary. With this control function, the parent company can know the development of the business activities of each subsidiary.

4. Linkage through Voting Agreement

The relationship between the parent and the subsidiary can also occur because of the voting rights agreement made between the founding shareholders, which agrees that the appointment of the directors and the board of commissioners is determined by one of the founding shareholders.

5. Linkage by Contract

The Company may transfer control of management to another company through a Company Management Agreement. Meanwhile, in the explanation of Article 29 of Law No.1 of 1995, a subsidiary is a company that has a special relationship with other companies which can occur because:

- a. More than 50% of its shares are owned by the holding company.
- b. More than 50% of the votes in the GMS are held by the parent company.
- c. Control over the running of the company, the appointment and dismissal of directors and commissioners are strongly influenced by the parent company.

The legal relationship that arises between the parent company and its subsidiaries is a contractual relationship. The contractual here is that the subsidiary has the right to enter into a personal engagement with other parties, as long as the legal action taken does not exceed the limits in the articles of association of the company. An example that can be taken from a group company relationship is that a subsidiary company to be able to take certain legal actions must obtain the approval of the General Meeting of Shareholders (including the parent company as the majority shareholder). All legal actions of the subsidiary related to the articles of association must be approved by the shareholders (parent company). Therefore, the organization and management of the parent company are regulated in the same manner as an ordinary Limited Liability Company, namely in the articles of association of the parent company.

The parent company supervises the subsidiary to the extent of its position as a shareholder and to the extent stipulated in the articles of association of the subsidiary.

The responsibility of the parent company as the guarantor (corporate guarantee) of the subsidiary if the subsidiary is in default in the credit agreement.

1. In a group company, the parent company and subsidiaries are independent legal entities, so that each company is a holder of its own rights and obligations which also has its own assets which are legally separate and separate from the personal assets of their shareholders. The legal consequences of all legal consequences caused by policies/legal actions taken by the subsidiary even though the action is dictated by the parent company as is often the case with management holding companies, the legal consequences that occur remain the responsibility of the subsidiary, except as previously stated that the parent company has committed an act that violates the law and which can be resolved by using the doctrine of piercing the corporate veil.
2. The subsidiary entered into a credit agreement in the form of borrowing a sum of money from a bank accompanied by a material guarantee as a guarantor of debt repayment. So if the subsidiary does not pay its debt when it is due, the bank can demand the execution of the object that has been pledged by the subsidiary to pay off its debt. In the process, if the material guarantee is deemed insufficient in fulfilling the performance, the bank may request additional individual guarantees in the credit agreement. An individual guarantee or borgtocht is a guarantee provided by a subsidiary not in the form of objects but in the form of a statement by a third party (guarantor/guarantor) who has no interest in either the debtor or the creditor.
3. In the credit agreement, if the subsidiary is in default where the debt repayments are not fulfilled to a predetermined limit, the parent company acting as guarantor can be held responsible for fulfilling the achievements of the debtor. To be able to ask for guarantee accountability, of course beforehand there must be a personal agreement made by the parent company with the bank that if the subsidiary does not meet its achievements, the parent company is willing to voluntarily fulfill the achievements of the subsidiary. The personal agreement made by the parent company with the bank must first obtain approval in the GMS that the parent company is given permission to act as guarantor (guarantor) of the subsidiary's debt in a credit agreement that it does. If the agreement does not exist, the parent company cannot be held responsible for paying off debts from its subsidiary.

RESEARCH METHODS

This research uses Literature Study and examines the applicable regulations, namely Financial Accounting Standards (PSAK), Limited Liability Company Law (UUPT), and Civil Law (KUHP).

The target of this research is business entities which are affiliated companies, namely those that have a relationship between the parent company and the subsidiary company, and between the subsidiary company and the subsidiary company.

Research Stages:

1. Exploring theories in relation to Affiliated Company Payables and Receivables including literature and published articles which are the result of research or study.
2. Reviewing regulations - regulations related to debts and receivables of affiliated companies.
3. Analyzing from the perspective of theory and the perspective of legality or the applicable legal basis.

DEBT ANALYSIS OF AFFILIATED COMPANIES BETWEEN PARENT AND SUBSIDIARIES AND BETWEEN SUBSIDIARIES AND SUBSIDIARIES

Based on PSAK 65 year 2015 requires the preparation of consolidated financial statements for the relationship between the parent company and its subsidiaries, including payables and receivables of affiliates.

CONSOLIDATED FINANCIAL STATEMENTS

Consolidated financial statements are financial statements that present financial information belonging to the parent company and subsidiaries in one report as if they were one entity.

Based on this definition, not all companies apply these consolidated financial statements. Companies that apply these consolidated financial statements have the following requirements:

- Having one or more subsidiaries as evidenced by share ownership.
- The parent company's share ownership of the subsidiary is more than 50%.
- The parent company's share ownership of the subsidiary is less than 50% but the parent company has full control.

Furthermore, based on PSAK 65 requires entities to prepare Consolidated Financial Statements, if the above consolidation requirements are met, in this case the Parent Company cannot present separate reports (without consolidation). The parent company can present its own Financial Statements, if to provide additional information for users of the consolidated financial statements. Thus, it is implied that the parent company's financial statements are presented in additional information. In the event that consolidation is not carried out, investments in subsidiaries must be accounted for using the equity method.

The equity method is an accounting method in which investments are initially recognized at cost.

- It is increased or decreased to recognize the investee's share of profit or loss after the date of acquisition.
- The recognition of the investee's comprehensive income is recognized as comprehensive income and an increase in the investment on the investor's books.
- Distributions from the investee reduce the carrying amount of the investment.

Under the equity method, investments are recorded at cost and then debited or credited with a proportionate share of the subsidiary's profit or loss. Dividends received are recorded to reduce the estimated investment in question.

How to Make Consolidated Financial Statements

The preparation of consolidated financial statements has the same parts as ordinary financial statements, which consist of balance sheets, income statements, statements of changes in equity, and cash flow statements). In the consolidated financial statements, it consists of a consolidated balance sheet, a consolidated statement of income, a consolidated statement of retained earnings, and a consolidated statement of cash flows.

The way to prepare this report is by placing the financial statements of the parent and subsidiary entities side by side in a consolidated working paper. Compilation can use Microsoft Excel or accounting software. With the following steps:

1. Start by examining the financial statements of the parent and subsidiary companies as a whole. Identify if there are errors or omissions in the recording, then make adjustments.
2. Adjust the financial statements by eliminating the intercompany income statement.
3. Eliminate earnings and dividends from subsidiaries.
4. Return the balance of the investment account in the subsidiary to the beginning balance of the period.
5. Make adjustments to make a note of the non-controlling interest in the subsidiary's profits and dividends.
6. Elimination of reciprocal balances on the subsidiary company's statements that were originally reported in the parent company's financial statements.
7. Elimination of previously reported equity in the subsidiary's finances.
8. Perform allocation and amortization when there is a difference in value.
9. Eliminate other respiratory balances, such as debts, income and expenses, and others.

These consolidated financial statements are only required by companies that have subsidiaries, as well as other conditions that have been mentioned. If the company does not have a subsidiary, or the parent company does not have control over the subsidiary, there is no need to prepare consolidated financial statements.

COMPILATION OF FINANCIAL STATEMENTS

The following is presented about the compiled financial statements so that it can be seen the difference with the consolidated reports.

Compiled Financial Statements are services provided by accountants that are limited to the presentation of financial statements and notes to financial statements in accordance with applicable accounting standards, starting with an engagement letter between the accountant and management or owner of a company.

Unlike the General Audit, the Compiled Financial Report does not provide an OPINION or other form of assurance on the fairness of the presentation of the financial statements. If assurance is not stated, the procedure used is the compilation of financial statements.

Several important points need to be underlined that the Accountant's Compilation Report is not an Independent Auditor's Report. Often to avoid misinterpretation, each page of financial statements is usually marked "UNAUDITED" / in accordance with the provisions set by the accounting professional organization.

DEBT TO EQUITY SWAP

In a debt to equity swap transaction, as long as it is carried out with the same value between debt repayment and equity participation, which is equal to the book value of the last debt, there will be no immediate tax consequences. In the event that the debt (to the amount of the last book value) is repaid through a change of form into a smaller capital investment, the difference is a gain due to the debt relief for the debtor and the write-off of receivables for the creditor based on an agreement. On the other hand, if the amount of equity participation is greater than the last book value of the debt paid off, then the difference is interest income for creditors and interest costs for debtors. Agio and disagio shares arising from equity participation transactions using market prices,

Debt to equity swap transaction is a transaction to issue new shares where payment for the shares is made by converting receivables from creditors or shareholders of a limited liability company into new shares. Shareholders or creditors who have claims against the company can compensate their claim rights as a payment for the share price, as long as this is approved by the GMS.

Based on the Payables and Receivables data between the Subsidiaries and their subsidiaries, the amount is for operational funds in 2021 and before, payables incurred for the payment of dividends in 2020 and before and payables due to land leases. In this regard, the relationship between the Subsidiary and its subsidiaries is not regulated in the Undang – Undang Perseroan Terbatas Number 40 year 2007 and not regulated in PSAK, the receivables do not have the criteria for a parent-child relationship.

However, it still affects the performance of the parent company's Financial Statements in the sense that the occurrence of receivables for subsidiaries causes debts to arise for other subsidiaries that transact which can affect the increase or decrease in liquidity performance and leverage performance as well as the working capital performance of each subsidiary.

CONCLUSION

Considering the type of payables and receivables, the appropriate debt to equity swap is the Receivables incurred for the Parent Company on loan funds for the operations of subsidiaries because funds have been deposited.

Meanwhile, if the debt that arises for capital deposit from the Parent Company to the subsidiary is due to the enactment of the Undang – Undang Perseroan Terbatas No. 40 year 2007 and the Receivable arising from the Parent Company due to unpaid dividends by the subsidiary, it cannot use the Debt to Equity Swap strategy because it does not there is a deposit transaction.

Considering the relationship between the terms and conditions of the relationship between the Parent Company and Subsidiaries that have met the following conditions:

- Having one or more subsidiaries as evidenced by share ownership.
- The parent company's share ownership of the subsidiary is more than 50%.
- The parent company's share ownership of the subsidiary is less than 50% but the parent company has full control.

Therefore, it is recommended to consolidate the accounts payable between the Parent Company and its subsidiaries with the following consolidation steps:

1. Start by examining the financial statements of the parent and subsidiary companies as a whole. Identify if there are errors or omissions in the recording, then make adjustments.
2. Adjust the report by eliminating the income statement between each company.
3. Eliminate earnings and dividends from subsidiaries.
4. Return the balance of the investment account in the subsidiary to the beginning balance of the period.
5. Make adjustments to make a note of the non-controlling interest in the subsidiary's profits and dividends.
6. Elimination of respiratory balances in the subsidiary company's statements that were originally reported in the parent company's financial statements.
7. Elimination of previously reported equity in the subsidiary's finances.
8. Perform allocation and amortization when there is a difference in value.
9. Eliminate other respiratory balances, such as debts, income and expenses, and others.

Considering the condition of the parent company and subsidiaries that are still conducting their financial reporting as separate entities with the Independent Auditor's Report (LAI) on each entity. Although the relationship between the parent company and its subsidiaries is that audit reports are issued for each of the parent companies and subsidiaries, in the sense that they have not consolidated but compile the overall financial statements that are not accompanied by an audit opinion for the compiled financial statements, it is recommended that the parent company should use a debt to equity swap strategy with the following steps:

1. Identification of payables and receivables of the parent company and its subsidiaries.
2. What can be done by a debt to equity swap is a debt that is incurred due to a loan of funds in the sense that there is a deposit of funds from parent to child or from child to parent.
3. The plan to transfer from debt or debt to capital or equity must go through the General Meeting of Shareholders or GMS which is attended by related parties from the Board of Directors of the parent company and directors of the subsidiary.
4. Meanwhile, accounts payable between parent and subsidiary that are not due to loan funds, for example, accounts payable that occur due to the capital deposit of the parent company. Payables on dividends or other receivables that arise not due to borrowing funds must still be recorded as accounts payable between the parent and the subsidiary.
5. The consequences are:
 - a. The impact on taxation arising from a tax on interest of 15% becomes a tax on dividends of 20%.
 - b. Prepare notarial deed of changes due to debt to equity swap.
 - c. For the reclassification made from debt or debt to capital or equity for one company, it is necessary to check the recording of the reclassification also from receivables or receivables to equity participation or investment for other companies.
 - d. The above reclassification also affects liquidity performance and working capital performance, receivables performance, debt performance, investment performance and equity performance for the parent company and subsidiaries.
 - e. The occurrence of a debt to equity swap, especially the recording of debt for the parent company to its subsidiaries, will shift the composition of the number of paid-up shares.

Payables and receivables that occur between subsidiaries, especially in terms of loan funds, must remain under the control of the parent company, especially the use of the loan funds so that the funds are used for activities that are profitable for the business of both parties which will ultimately improve the financial performance of the parent and subsidiary.

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