

Legal Aspect of Individual Company for Micro and Small Business in Omnibus Law on Job Creation

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ABSTRACT

The Job Creation Act (UU CK) has legal implications for the content of a large number of laws. Sole proprietorships have expanded the meaning of Limited Liability Companies by presenting the Sole Proprietorship model which has given birth to a number of contradictions in the basic concept of Limited Liability Companies. The formulation of the problem in this study is how the legal aspects of a sole proprietorship are for micro and small businesses and the implementation of the Employment Act. Normative research using qualitative methods. A sole proprietorship is a legal entity. The fundamental difference between the two is in terms of share ownership, where a Limited Liability Company may not have a single share, while a sole proprietorship may not have more than one shareholder. There are exceptions to the rule for individual companies that meet the criteria for micro and small businesses. Regarding the change of status from a sole proprietorship to a limited liability company, GMS, and Capital. There need to be regulations that regulate and guarantee convenience for individual companies which are feared to cause vulnerabilities in business continuity, given the absence of a credible enough authorized capital guarantee for third parties and individual status which will hinder investment and the sanctions given. Massive socialization and literacy must be carried out by the government regarding individual companies. There needs to be regulations that regulate and guarantee convenience for individual companies which are feared to cause vulnerabilities in business continuity, given the absence of a credible enough authorized capital guarantee for third parties and individual status which will hinder investment and the sanctions given. Massive socialization and literacy must be carried out by the government regarding individual companies. There need to be regulations that regulate and guarantee convenience for individual companies which are feared to cause vulnerabilities in business continuity, given the absence of a credible enough authorized capital guarantee for third parties and individual status which will hinder investment and the sanctions given. Massive socialization and literacy must be carried out by the government regarding individual companies.

Keywords: Single Shareholder, Limited Liability Company, Law on Job Creation, Micro and Small Enterprises.

1. INTRODUCTION

The COVID-19 outbreak has had a significant impact on the decline in economic development in Indonesia, even in global conditions. The government must try to support economic growth by providing regulations and affordable prices. Previously, there were 42,966 regulations at both the central and regional levels that described the complexity, and overlapping regulations in Indonesia that prevented potential investors from doing business in Indonesia. However, in the face of a pandemic, people hope to start MSEs as a solution to support their financial needs[1].

The existence of the Job Creation Law has brought changes in growing business in Indonesia. The Job Creation Law aims to be a positive stimulus

for improvement and national economic growth that will provide more jobs for the community. The Job Creation Law is also a breakthrough and a way for the Government to seize foreign investment through streamlining licensing and cutting bureaucracy [2].

Through this regulation, the government hopes that business actors will not experience obstacles in building their businesses. Previously, business actors had to deal with overlapping laws and regulations regarding the implementation of permits, especially for the government that gave institutional permits. Unclear service licensing procedures and mechanisms. Uncertain cost standards and licensing deadlines have resulted in slow investment and lack of access to financial services, especially from formal institutions[3].

The World Bank and International Finance Corporation (IFC) ranked Indonesia 166 in the world for ease of doing business, highlighting the rigorous process involved in getting started. Compared to the five OECD average, it takes nine procedures to set up a business entity in Indonesia, which takes an average of 47 days to complete[4]. Businesses must work closely with the State Treasury, Ministry of Law and Human Rights, and Ministry of Manpower, and complete multiple registrations[5]. Thus, the formation of business prospects in Indonesia so that it does not lag behind neighboring countries and ranks fifth at the ASEAN level. Therefore, the Government made a breakthrough so that everyone could easily start their own business, especially for Micro and Small Enterprises (UMK). In Indonesia, there are more than 64.2 million MSMEs contributing 99.9% of total entrepreneurship with a workforce absorption of 97% which will encourage national economic growth.[6].

The Job Creation Law, which was ratified through Law Number 11 of 2020 concerning Job Creation (UU CK), at least has legal implications for the content of a large number of laws, one of which is regarding Limited Liability Companies (UU PT) and individual companies. Some argue that the current Limited Liability Company Law is still able to accommodate various provisions regarding the Company, either in the form of adding new provisions, improving, or maintaining old provisions that are considered relevant.[7]. However, not a few are of the opinion that the implications for the Limited Liability Company Law in the provisions of the Job Creation Law have expanded the meaning of a Limited Liability Company by presenting the Sole Proprietorship model which gave birth to a number of contradictions in the basic concept of a Limited Liability Company, as well as removing the Company's minimum capital limit which is feared to cause vulnerabilities for business continuity.[8]

The things that underlie the considerations of this writing are that the regulations regarding the Copyright Law regarding Individual Companies for MSMEs that have been made still provide some legal basis for the legal basis of the previous legal entity, namely Limited Liability Companies. Therefore, based on the description above, the formulation of the problem in this study is how the legal aspects of individual companies for MSMEs

and implementation in the Job Creation Act. With the aim of providing legal aspects of its implementation.

2. RESEARCH METHODS

This research uses normative legal research. This normative legal research is carried out by examining library materials or secondary data, derived from literature related to the form for companies founded by less than two people and the PP of the Company in the event of a transition from a sole proprietorship to a limited liability company and vice versa.[7].

Data collection in this paper is carried out by studying documents and related library materials, by collecting regulations relating to company law, as well as searching literature, articles, and books and journals as material to provide information related to company law. The sources of legal materials in this study consist of primary legal materials, which consist of the Company Law, the Job Creation Law and PP as well as secondary legal materials used, namely books and journals on company law. As for the method of analysis of legal materials in this paper using qualitative descriptive techniques.

3. FINDINGS AND DISCUSSION

1. Individual Company as a Legal Entity

A limited liability company as a legal entity is supported by the existence of various kinds of laws and regulations which are also an indication of government participation or involvement in supporting the world economy as the basis for the growth and development of a country. The company as a legal entity means that the company is a legal subject, so the company can be burdened with rights and obligations like humans in general[9].

The Job Creation Law revises various statutory provisions in various sectors, including Law No.40 of 2007 concerning Limited Liability Companies (UUPT), which helps regulate business norms and practices in Indonesia[10]. One of the legal arrangements needed to support economic development is a Limited Liability Company, whether micro, small, medium or large, which is the most common and most frequently used model today, due to limited liability within the company.

According to the Limited Liability Company Law that a company is established based on an agreement, this shows that the company is an association of people who agree to establish a business entity in the form of a limited liability company. Because the basis for its establishment is based on an agreement, the establishment of a

Limited Liability Company cannot be separated from the conditions for the validity of an agreement according to the provisions contained in Article 1320 of the Civil Code.[11].

The main element of this legal entity is what is called segregated wealth, which means it has its own wealth that is separate from shareholders as owners. The characteristics of the two legal entities are the limited liability of the shareholders as the owners of the company and the manager of the company[12]. Prior to the establishment of a limited liability company, it must be carried out by 2 or more people. This is as regulated in Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT). This provision must be implemented by everyone who wants to establish a Limited Liability Company. So if there is an individual who wants to establish a PT, then the individual must find one or more people to be able to establish a PT[13].

In the same article, specifically Article 7 paragraph (7) of the Company Law, provides an exception regarding the establishment of a PT by 2 or more people. However, the exclusion provisions of Article 7 paragraph (7) of the Limited Liability Company Law are amended by the Job Creation Law. Through Article 109 number 2 of the Job Creation Law, one of the exceptions is the company that meets the criteria for Micro and Small Enterprises (UMK). According to Article 109 number 5 of the Job Creation Law, a company that meets the MSE criteria can only establish a PT by one person or a so-called individual company.

In the formation of a limited liability company, MSMEs can only be done once. This is regulated in Article 109 number 5 of the Copyright Law which states that the founder of the Company can only establish 1 Limited Liability Company for Micro and Small Businesses in 1 year. Thus, everyone who wants to set up a Limited Liability Company must consider the purpose of establishing a limited liability company because the opportunity is only once a year. The establishment of a Limited Liability Company for Micro and Small Enterprises is carried out based on a Statement of Establishment made in the Indonesian language. Because a Micro and Small Business Limited Liability Company can be established by 1 (one) person, its establishment is not based on an agreement but based on a statement letter. Based on Article 153C of the Job Creation Law, changes in the statement of establishment of

the Company for Micro and Small (Individual) Enterprises are determined by the GMS and notified electronically to the Minister. The word GMS in this arrangement is actually inaccurate considering that each company does not have a GMS organ, there is only one shareholder.

The legal entity status of a company can only be obtained when it is approved by the Minister of Law and Human Rights against the Articles of Association and Deed of Establishment of the legal entity. More specifically for individual legal entities, it is stated in Article 6 paragraph (3) of the Company's Government Regulation which also states that the status of legal entities is obtained after being registered with the Minister and subsequently obtaining electronic registration certification. In addition, based on several theories of legal entities, legal entities can also be recognized because of certain characteristics, namely the existence of separate assets, having certain goals, having their own interests and the existence of an organized organization.[14].

Law, according to Eugen Ehrlich, is a living rule or habit; it is not something added from without; it is something that exists in life and develops in society. Laws are embodied and expressed in their own conduct. In other words, the law is "social law".[15]. The law is formed through habits which gradually become binding and become an effective order, then life goes on in that order (living law). In this case, through this habit a new positive legal system emerged[7].

So far, the Company has been regulated in the Company Law, but in practice there are still many people who want to set up a business but are constrained by the difficulty of bureaucracy and complicated arrangements. This is what makes them choose not to establish a company as referred to in the Company Law but instead switch to establishing a business entity that is similar but not the same, namely a sole proprietorship. The behavior of the community is increasingly being carried out and eventually becomes a binding habit, so that the Ciptaker Law is issued which legitimizes the behavior of the community.

A company as a legal entity means that an individual company is a legal subject, so that the company can be burdened with rights and obligations like humans in general. As a legal entity, the company has its own assets that are separate from the assets of its management. The liability of

shareholders is limited to the shares they own, but if it can be proven that there has been an amalgamation of the shareholder's personal assets with the company's assets, then the limited liability will change to unlimited liability, meaning that the shareholder is personally responsible for the company's losses are no longer limited to the shares it owns in the company as the principle of responsibility adopted by a legal entity but also the implementation of an individual company in society.[13].

Considering the absence of regulation that regulates business carried out individually so that it indirectly gives clarity to the form of business carried out individually. As a result of the absence of these regulations, and also in order to accommodate people's intentions in entrepreneurship, the government issued Law Number 11 of 2020 concerning Job Creation which was subsequently followed up by the issuance of Government Regulation Number 8 of 2021 concerning Authorized Capital of the Company and Registration of Establishments, Changes, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises as implementing regulations[16].

2. Implementation of Individual Companies for Micro And Small Enterprises And Their Legal Issues

To realize the ease of doing business, it is necessary to form a new type of business entity, especially for MSEs in the form of a Limited Liability Company which can be established by one person as an individual. Sole proprietorships are expected to provide convenience for MSEs in establishing a company with minimum requirements and capital. The European Union, UK, Malaysia and Singapore have a limited liability company concept that can be adapted to Indonesia[17].

Common problems faced by micro, small and medium business owners in Indonesia can be categorized into two main categories, namely internal and external problems. For internal problems, including lack of capital; limited human resources; and weak business networks and market penetration capabilities. External problems include a bad business climate; limited facilities for business; implications of regional autonomy regulations; short-term business products; and limited market access[18]. Micro, Small and Medium Enterprises

(MSMEs) are business actors engaged in various business fields that are of interest to the public.

Empowerment is one of the government's tasks to generate and provide real support to the community so that they can to develop the potential that exists in the community by developing local businesses that will create jobs for the community, and develop community innovation independently. To meet their economic needs. As the business sector with the largest contribution to national development, MSMEs also provide considerable job opportunities for domestic workers, thereby helping to reduce unemployment. Therefore, awareness support is needed in developing MSMEs in Indonesia in order to realize people's welfare.

As for some of the implementation of this individual company began to be regulated in the Copyright Act and also to further make the basis for implementing regulations in PP no. 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses. In these two provisions, namely Article 153H of the Copyright Law and Article 9 paragraph (1) of the Company's PP, it is stated that if a sole proprietorship is no longer owned by one person, it is obligated to change its status to a Limited Liability Company.[16].

This is reaffirmed in PP No. 8 of 2021, for example in the provisions of Article 2 which divide a company in the context of MSEs into a company by two or more people and an individual company. This provision clearly contradicts Article 7 paragraph (1) of the Limited Liability Company Law which explains that a company must be established of two or more people. Even if at the beginning of its establishment it turns out that the PT was formed by one person, but within a period of 6 (six) months from the situation, the sole shareholder is still obliged to transfer part of his shares to another person or another PT in order to fulfill the requirements based 2 (two) or more people.

Indeed, there are exceptions to this rule as regulated in Article 7 paragraph (7), which states that the provisions requiring the company to be established by 2 or more people do not apply: 1. Companies whose shares are wholly owned by the state; 2. Regional Owned Enterprises; 3. Village Owned Enterprises; 4. Companies that manage stock exchanges, clearing and guarantee institutions,

depository and settlement institutions, and other institutions in accordance with the Law on Capital Markets; or 5. Companies that meet the criteria for micro and small businesses.

Specifically related to the GMS, Article 13 in PP No. 8 of 2021 mentions the dissolution of an Individual Company which is determined through the GMS. This becomes ambiguous and confuses regarding what the GMS model is in an Individual Company. In fact, the concept of the GMS is an organ that has authority that is not given to the Board of Directors or the Board of Commissioners, while in an individual company the two organs are united in one person. Thus, equating the two types of decisions will oversimplify the problem (oversimplification) which can actually have implications for new problems, including the provisions regarding the minimum limit of authorized capital to establish a company. Where the amount of authorized capital of the company is only determined based on the decision of the founder of the company indirectly.

This is a risk of failure of payment by the company is very likely to occur. This arrangement has the potential to accommodate vulnerabilities to the inability to guarantee payment capabilities to third parties due to the absence of capital guarantees that can be used as a means of paying off creditors' receivables. This is because there is no capital guarantee that can be used as a means of paying off creditors' receivables. Thus, it will be difficult for the company to obtain capital from outside parties (banks), especially for large amounts.

Through the Job Creation Law, it is possible to build partnerships which are expected to support MSEs to run optimally. The government must support business actors with comprehensive socialization related to various criteria for providing fiscal incentives, tax incentives, legal assistance and assistance for MSMEs including capital ownership. The government supports ease of doing business in simplifying licensing, fostering and developing MSMEs, as well as providing fiscal incentives. However, the different criteria for MSMEs must be clarified because the different criteria in some of these regulations make business actors unsure of whether these regulations apply to their business[15].

Governments need to ensure the enforcement of contracts and property rights, as well as enforce credibility and consistency of policies.

Efforts to realize "one-stop" investment services and refine existing investment laws are positive developments that must be followed by more assertive and comprehensive policies, such as simplifying the role of local and central governments in investment procedures.[19].

The substance of the Employment Creation Law that regulates MSMEs focuses on the ease of the business licensing process, MSME criteria, a single database, integrated MSME management, and facilitating partnerships between MSMEs and large business actors. Based on the formulation of the Job Creation Law, the government's priority for the MSME sector focuses on the legality of MSMEs because informal forms of business are the cause of MSMEs not developing.

The difficulty of access to banking institutions makes most MSMEs still unable to develop their business and survive in an informal form. MSMEs lack knowledge of financial understanding of mechanisms and procedures, finding that by keeping their business structure informal, MSMEs can avoid paying taxes. The phenomenon of informality and business illegality must be answered through the formation of public policies aimed at legalizing informal business and other economic activities. MSMEs need legal assistance in discussing financial issues to support MSMEs so as not to start businesses illegally and informally.

This is where the inconsistency of the regulations contained in the Company Law, the Copyright Law and also the Company Regulations lies. On the one hand, all of these regulations regulate the imposition of sanctions if both the Limited Liability Company and the individual company do not comply with the provisions regarding the number of shareholders they have, but on the other hand, the regulation does not explain in detail how the process or mechanism for the change is.

In all these regulations, we do not find how the regulations regarding the change of status from a sole proprietorship to a Limited Liability Company and vice versa from a Limited Liability Company to a sole proprietorship. In addition, if viewed from the nature of the sanctions imposed, this status change should be mandatory so that there needs to be a deterrent effect if this status change is not made for some time. Meanwhile, in the Company Law, the

Job Creation Law and the Company Regulations, there is no explanation regarding the deterrent effect.

In Article 153J of the Copyright Law, it is explained that shareholders must be personally responsible if the requirements as legal entities have not been or are not met. The provisions in the Company Law invite more questions related to sanctions, where it is said that at the request of interested parties, the district court can dissolve Limited company[11].

Even though the dissolution cannot be carried out immediately, it is necessary to look at the side effects related to the dissolution, including how the legal relationship of the Limited Liability Company is with third parties. If you refer to the provisions in the Limited Liability Company Law that do not apply to individual companies, it is appropriate for Limited Liability Companies, the responsibility and separation of assets to apply equally to all Limited Liability Companies regardless of the number of shareholders they have. Likewise, a sole proprietorship should also apply the same thing regardless of the number of shareholders it has.[8]

4. CONCLUSION

A limited liability company and a sole proprietorship are legal entities, the basic difference between the two is in terms of share ownership, where a limited liability company may not have a single share, while a sole proprietorship may not have more than one shareholder. As for some of the implementation of this individual company began to be regulated in the Copyright Act and also to further make the basis for implementing regulations in PP Regulation no. 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses.

If the sole proprietorship is no longer owned by one person, it is obligated to change its status to a Limited Liability Company, the Company must be established by two or more persons. Even if at the beginning of its establishment it turns out that the PT was formed by one person, but within 6 (six) months from the situation, the sole shareholder is still obliged to transfer part of his shares to another person or another PT in order to fulfill the requirements based on of 2 (two) or more people.

There are exceptions for companies that meet the criteria for micro and small businesses.

The concept of GMS is an organ that has authority that is not given to the Board of Directors or the Board of Commissioners, while in an individual company the two organs are united in one person. Provisions regarding the minimum limit of authorized capital to establish a company. where the amount of authorized capital of the company is only determined based on the decision of the founder of the company. Indirectly, this is tantamount to saying that there is no need for authorized capital or minimum assets that must be owned by the company. Failure to pay by the company is very likely to occur. This arrangement has the potential to accommodate vulnerabilities to the inability to guarantee payment capabilities to third parties due to the absence of capital guarantees that can be used as a means of paying off creditors' receivables. This is because no capital guarantee can be used can be used as a means of paying off creditors' receivables. Thus, it will be difficult for the company to obtain capital from outside parties (banks), especially for large amounts.

There needs to be a regulation that regulates and guarantees convenience for individual companies in borrowing credit, given the absence of a credible enough authorized capital guarantee for third parties, including sanctions given as well as socialization and literacy to the community.

AUTHORS' CONTRIBUTIONS

The first author is the main contributor while the other authors are member contributors.

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