



# Legal Liability of Indonesia Private Company to Third Parties: A Lesson Learned from India

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**Abstract.** The development of business in Indonesia is increasingly advanced, making the Indonesian government strive to take advantage of the potential possessed by its people in the business sector by making it easier for people struggling in Micro and Small Enterprises. This article examines the legal liability of Private Company boards to third parties based on Job Creation Law. The article uses prescriptive legal research and approaches in this study: the statute, comparative, and conceptual. The research shows that in the Job Creation Law, it is necessary to strengthen regulations regarding Liability Companies of OPC to clarify the limits of authority, management, and accountability. It can also adopt the same “one-tier” system as applied by India due to the form of India’s OPC being simpler and more practical, which is regulated in one law concerning Limited Liability Companies with various forms of Companies, both private and public companies AI.

**Keywords:** liability · micro-small enterprises · one-person company

## 1 Introduction

The development of business in Indonesia is increasingly advanced, making the Indonesian government strive to take advantage of the potential possessed by its people in the business sector by making it easier for people struggling in the Micro and Small Enterprises (hereinafter named MSE) sector through the Job Creation Law [1]. According to Article 109 paragraph (1) of the Job Creation Law, this law divides legal entities into two types of capital partnerships, namely: “...established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares...” and “...an individual legal entity that meets the criteria for micro and small businesses as regulated in the laws and regulations concerning micro and small businesses”.

In Government Regulation Number 8 of 2021, a Private Limited Liability Company that meets the MSE criteria can be referred to as an Individual Company, which states that an MSE can register itself as an Individual Company established by one person or an individual company. One tier in an Individual Company means the sole shareholder and a director managing the company without a commissioner [2]. The Individual Company concept has long been applied to Germany, the first country to introduce the Individual Company concept as GmbH (Gesellschaft mit Beschränkter Haftung). In addition, there are also Indian countries that have recently implemented Individual Company as OPC (One-Person Companies). Individual companies in the two countries have something in common, namely that 1 (one) shareholder can establish both.

## 2 Research Method

The article uses legal research that is prescriptive and applied. By using primary and secondary legal sources, the legal analysis is carried out to produce new arguments, theories, and concepts with prescriptions for solving problems [3]. The authors used several approaches in this study: the statute, comparative, and conceptual.

## 3 Finding and Discussion

### 3.1 Individual Company in Indonesia

The arrangement of a Private Limited Liability Company (Individual Company) as a form of change to the regulation of Limited Liability Companies in the Limited Liability Company Law is regulated in Chapter VI Ease of Doing Business Part Five Article 109 in the Job Creation Law. The author summarises several points based on articles regarding changes to a legal entity in the form of an Individual Company based on the Job Creation Law. The *first* is regarding the definition of a Limited Liability Company. Observing the amendment to the first provision in Article 1 point 1 of the Company Law, the article proves that the Job Creation Law presents a new legal entity form in the form of an Individual Company for micro and small business criteria.

*Second*, the authorized capital of an individual company. Regarding the capital in a Limited Liability Company, there is an amendment to Article 32 of the Company Law in Article 109, number 3 of the Job Creation Law, that the Company is required to have the authorized capital of the Company. The amount of the Company's authorized money is determined based on the decision of the founder of the Company. *Third*, regarding the establishment of an individual Company. Article 7 of the Company Law states that the Company is established by 2 (two) or more persons through a notarial deed, is no longer valid, and is amended as Article 109 number 2 of Job Creation Law. Based on these provisions, the law adds that companies that meet the MSE criteria can establish a company that can be done without a notarial deed and is only made based on a statement of establishment in Indonesian which is then registered with the Minister electronically.

*Fourth*, concerning the management organ of an individual Company, as a legal entity similar to a public company, an individual company also requires the existence of a company organ to represent all legal actions of the company. Regarding the capacity of shareholders, Shareholders must establish an individual company with a Statement of Establishment in Indonesian, registered electronically to the Minister by filling in the form and recording with the Ministry of Law and Human Rights [4]. In case of the Individual Company has more than 1 (one) shareholder; or no longer meets the criteria as a UMK, then the individual company is obliged to change its status to a company. This case has been regulated through Article 153H of the Job Creation Law.

### 3.2 One Person Companies in India

India is one of the countries that has recently adopted the form of a Private Limited Liability Company known as the 'One-Person Company (OPC)'. The OPC has been

officially established since The Companies Act, 2013 (No. 18 of 2013). Section 2 (62) defines a “One-Person Company” means a company that has only one person as a member”. The word ‘member’ in India means ‘shareholder’. OPC is a legal entity that can be established by only 1 (one) person as regulated in Sect. 3 (1) c of the India Companies Act. An OPC can only be established and owned by a natural person and an Indian citizen who has resided in India for at least 180 (one hundred and eighty) days. One person can only establish 1 (one) OPC.

OPC is a business entity with limited liability, as stipulated in Sect. 4 (1) d, e, and f of the India Companies Act 2013. The management of OPC can be carried out by only 1 (one) Director and is not obliged to have a Board of Commissioners. Section 149 (1) a and b explains that the OPC must have a Board of Directors consisting of at least 1 (one) person [5]. Directors in the OPC do not have to be shareholders but can appoint other people as Directors. In OPC, to protect the interests of third parties or investors of the Company, India limits certain forms of business for OPC. As regulated in Rule 3 (6) of Companies (Incorporation) Rules states prohibitions for the banking sector, non-bank financial business fields, and other investment business fields.

### **3.3 Comparison of Liability of Individual Private Limited Liability Company Organs to Third Parties Between Indonesia and India**

In principle, the liability of the Capital Partnership Company and the Individual Company is the same: the shareholders are not personally responsible. In the provisions of Article 153J paragraph (1), "The shareholders of the Company for Micro and Small Business are not personally responsible for the engagements made on behalf of the Company and are not responsible for the loss of the Company exceeding the shares owned".

However, because an individual company only has a single organ under certain conditions, the principle of separation of responsibilities requires a waiver by penetrating the curtain of liability [6]. Therefore, piercing the corporate veil doctrine states that the limited liability for Individual Company shareholders becomes invalid if: 1) the requirements of the Company as a legal entity have not been or are not fulfilled.; 2) the shareholder concerned, either directly or indirectly in bad faith, uses the Company for personal gain; 3) the shareholder concerned is involved in an unlawful act committed by the Company; or 4) the shareholders concerned, either directly or indirectly, illegally use the Company’s assets, which results in the Company’s assets being insufficient to pay off the Company’s debts.

With the One-tier system owned by Individual companies in Indonesia where the shareholders concurrently serve as directors, the ‘check and balance’ function cannot work properly in Individual companies. So that the mixing of assets in the management of individual companies will also be very difficult to avoid since the company is intended to carry out activities based on family or collective principles [7]. Under these conditions, the limits of liability will be increasingly difficult in terms of unprofessional management of the Company [8].

In general, the three individual Company models both in Indonesia and India have the form of management of the ‘One-tier board system’ in which a Private Limited Liability Company (Individual Company) can be established with only 1 (one) shareholder. India

requires the appointment of a board of directors for the company's management to manage the control of the company.

Thus, regarding accountability, the two One Company concepts in India and Indonesia are both limited to the value of the shares owned. In India OPC, the principle of Piercing the Corporate Veil is also applied. It is the same in Indonesia, which uses this principle as stated in Article 153J paragraph (2) of the Company Law. However, in Indonesia, concurrent positions are held with shareholders and directors who directly involve shareholders in managing the company. Thus, in terms of accountability, it can have implications for the difficulty of implementing limited liability for an individual company.

Applying the one-tier system concept in Indonesia differs from the One-tier system adopted by India. In India, the company's organs still consist of the GMS, the Board of Directors, and the Board of Commissioners. They can hold concurrent positions on the Board of Directors and Commissioners. Whereas in Indonesia, shareholders can hold simultaneous positions as Directors.

## 4 Conclusion

In the Job Creation Law, it is necessary to strengthen regulations regarding Liability Companies of OPC to clarify the limits of authority, management, supervision, and accountability for Individual Company organs, namely through the addition of Articles in the Job Creation Law and its implementing regulations. It can also adopt the same "one-tier" system as applied by India while still appointing another person as Director to carry out the management and due to the form of India's OPC is simpler and more practical, which is regulated in one law concerning Limited Liability Companies with various forms of Companies, both private and public companies.

The liability of Individual Company Organs in Indonesia is limited; that is, it does not exceed the capital in the company. However, a shareholder may be subject to personal liability in certain circumstances. India has limited liability but also applies the principle of *Piercing the Corporate Veil* in liability to third parties. In India, the company's organs still consist of the Board of Directors and the Commissioners whose positions are concurrent with the Board of Directors and the Board of Commissioners. While in Indonesia, the shareholders only hold simultaneous positions as Directors.

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