

Liability of Individual Companies Against Third Party Losses



Valentinus Ian Gunawan

Faculty of Law, Wijaya Kusuma Surabaya University, Jl. Dukuh Kupang XXV/54, Surabaya, Indonesia

ABSTRACT: Micro, Small and Medium Enterprises (UMKM) bring a heavy impact to raise Indonesia's economy. They accommodate the growth of the nation's gross income by 60.5% and employ 96.9 % of the total man power in this country. To raise the impact of small and medium enterprises the government aims to create more conducive business conditions with the Job Creation Act (UU Ciptaker). In this Act, the small and medium enterprise is allowed to build a limited liability company with only one share holder, named Individual Company for MSME's. The Individual Company for MSME's has the same liability as Limited Liability Company although the Individual Company is run by one person only. In The Individual Company, the company itself only has the same person as Director, and for the consequence of a company that only runs by one person that person also functions as the general meeting of shareholders (GMS). The job creation act is contrary to the limited liability company act. This research studies the liability of Individual Companies for MSME's with the third party. The result of this research can be used by the third party who runs a contract with the Individual Company for MSME's because the Individual Company for MSME's doesn't have a complete company organ. The founder of Individual Company for MSME's function as the director and general meeting of shareholders. In the Individual Company for MSME's doesn't have a commissioner, so the Individual Company for MSME's doesn't have a proper surveillance and "checks and balances". That condition makes the third party who has a contract with the Individual Company for MSME's need a proper legal protection.

KEYWORDS: Individual Companies; MSMEs; Accountability; Job Creation

I. INTRODUCTION

In 2020 the Government together with the People's Representative Council passed Law Number 11 of 2020 concerning Job Creation. This law is very popular in society because it is in the form of an omnibus law which regulates many things and one of the most important things is increasing employment and ease of doing business.

The journey of the Job Creation Law until this paper was written by researchers has been a long journey, the Job Creation Law in 2020 was challenged at the Constitutional Court, from the results in the Constitutional Court decision Number 91/PUU-XVII/2020 whose decision read: "Declaring the establishment of the Law The Job Creation Law is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted as not being corrected within 2 (two) years of this decision being pronounced.

As a consequence of the Constitutional Court's decision, on 30 December 2022 the Government issued a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as the Job Creation Perppu). The House of Representatives of the Republic of Indonesia in its 19th Plenary Session for the fourth session of the 2022-2023 session year in Senayan on Tuesday, March 21 2023 officially approved the Job Creation Perppu to become law and issued Law Number 6 of 2023 concerning the Determination of Government Regulations Substitute Law Number 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the Job Creation Law).

President Joko Widodo revealed the main objective of ratifying the Job Creation Law. He revealed that the main objective of the Job Creation Law is to create a quality business and investment climate for business people, including Micro, Small and Medium Enterprises (hereinafter referred to as MSMEs) and foreign investors. Meanwhile, the objectives of the creation of the Job Creation Law are:¹

1. Create and increase employment opportunities by providing convenience, protection and empowerment for cooperatives and MSMEs as well as national industry and trade as an effort to absorb the largest possible Indonesian workforce while still paying attention to balance and progress between regions in national economic unity.

¹ David Wahyudi, "Tujuan Dibentuknya Undang-Undang Cipta Kerja", www.tribatanews.bengkulu.polro.go.id, diakses pada tanggal 15 Januari 2023.

Liability of Individual Companies Against Third Party Losses

2. Guarantee that every citizen gets a job, and receives fair and decent compensation and treatment in employment relations.
3. Make adjustments to various regulatory aspects related to support, strengthening and protection for cooperatives and MSMEs as well as national industry.
4. Make adjustments to various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented towards national interests based on national science and technology guided by the Pancasila ideology.

One of the chapters of the Job Creation Law regulates the ease of doing business for companies. The definition of a company has expanded following the promulgation of the Job Creation Law, one of the clusters of which is amending and adding provisions in Law Number 40 of 2007 (hereinafter referred to as the PT Law). The Job Creation Law is expected to be able to absorb labor, create new jobs, and increase domestic and foreign investment in Indonesia by streamlining regulations in several fields that have so far hampered national economic development, including several provisions in the PT Law.

Drafted using the omnibus law technique, the Job Creation Law is the government's breakthrough in overcoming the hyper regulation that has occurred, this is because several policies have previously been taken, such as tightening proposed regulations, which have triggered many problems. In April 2021, implementing regulations for the Job Creation Law were promulgated through Government Regulations and Presidential Regulations, adding to the government's optimism in advancing the national economy. This is in line with how important it is to restructure Indonesia's positive law as an accelerator of national economic development, one of which is by reorganizing the rules in the field of company law. One of them is by making changes to several regulations related to Limited Liability Companies which are regulated in the PT Law. A Limited Liability Company is a form of business that is part of people's lives today, so it can be said that the concept of a Limited Liability Company business entity exists as a means of business activity which is part of vital economic activity. Considering that currently people's business or business activities cannot be separated from the existence of Limited Liability Companies ranging from micro to large classes as a form of business that is widely used. This is because the form of a legal entity in the form of a Limited Liability Company has limited liability.

One element of a legal entity is that assets are separated by "separate patrimony" between the personal assets of shareholders and the assets of the legal entity. Apart from the separation of assets, legal entities also have a distinctive characteristic, namely the association of capital from shareholders who are only responsible for the capital they place in the legal entity (limited liability). In short, shareholders are only responsible for the shares they own. This is what makes Limited Liability Companies different from other forms of business entities that do not have legal entity status.

Problems arose when there were quite significant changes in the PT Law through the Job Creation Law. One of them, with the introduction of a new concept in Indonesian company law, namely the presence of an Individual Legal Entity in the form of an Individual Company specifically for MSME actors. The aim of forming an Individual Limited Liability Company for MSME actors is to facilitate business development for MSME actors by being able to form a business entity with the legal entity of a Limited Liability Company. For this reason, the government has made changes to several provisions in the PT Law to accommodate support for MSMEs to do business through the form of a Limited Liability Company legal entity.

It can be compared to the definition of a Limited Liability Company in the PT Law and the Job Creation Law, that in the PT Law the definition of a Limited Liability Company is a legal entity in the form of a capital partnership or capital association established based on an agreement by 2 (two) or more people with authorized capital divided into shares. Meanwhile, in the Job Creation Law, the definition of a Limited Liability Company adheres to the concept of a Limited Liability Company as a legal entity institution, namely by explaining the concept of a Limited Liability Company with an individual legal entity established with a Statement of Establishment by only 1 (one) person as long as it meets the MSME criteria.

The establishment of a Limited Liability Company with a single founder basically results in the failure to fulfill 2 (two) elements in the basic concept of a Limited Liability Company, namely the existence of the 'association' element in the principle of capital partnership and the 'agreement' element in the principle of being established based on an agreement. This change has implications for the basic concept of a Limited Liability Company as a capital partnership/capital association business after changes to the PT Law through the Job Creation Law which provides space for establishing a Limited Liability Company by only 1 (one) person or sole founder.

This is considered to be able to change the basic concept of Limited Liability Companies which are now businesses with institutional associations. Based on the explanation of this background, it is deemed important to re-discuss the concept of establishing an Individual Company for MSMEs as regulated in the Job Creation Law which is seen as not being in line with the general theories, concepts and doctrines of legal entities and the Limited Liability Company law currently in force in Indonesia.

II. FORMULATION OF THE PROBLEM

Based on the background above, the researcher is interested in making a scientific work with the following problems, namely: how to organize an individual company without complete Limited Liability Company organs, and what is the accountability of an Individual Company towards third parties.

Liability of Individual Companies Against Third Party Losses

III. RESEARCH METHODS

This research is normative research considering that the discussion is based on applicable laws and regulations. This research uses doctrinal research, namely research that produces a systematic explanation of the legal rules that regulate a certain legal category.² Explain the relationship between legal rules, explain difficult areas, and predict future developments.

IV. DISCUSSION

A. *Implementation of Individual Companies Without Complete Company Organs*

Regulations regarding limited liability companies are regulated in the PT Law. The PT Law strengthens the concept of a limited liability company as a capital partnership by including it in the general provisions in Article 1 point 1 of the PT Law which reads: "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with capital basis which is entirely divided into shares and meets the requirements stipulated in this law and its implementing regulations."

The next regulation regarding limited liability companies underwent changes to the Job Creation Law. The regulation of limited companies in the Job Creation Law has expanded its meaning because Limited Liability Companies in this law can be established without an agreement but are limited to companies that meet the MSME criteria. This arrangement is regulated in Article 109 of the Job Creation Law. This article contains changes to the general provisions in Article 1 point 1 which reads: "Limited Liability Company, hereinafter referred to as a company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is wholly divided into shares or individual legal entities which meet the criteria for micro and small businesses as regulated in the laws and regulations regarding micro and small businesses."

Regulation of business entities for the MSME sector is regulated in the Regulations regarding MSMEs in Indonesia regulated in Law Number 20 of 2008 concerning Micro and Small Enterprises (hereinafter referred to as the MSME Law). In running an MSME, a business entity is needed to support these activities. Business entities that meet the MSME criteria are regulated in Article 1 of the MSME Law which reads:

Article 1:

1. Micro Business is a productive business owned by an individual and/or individual business entity that meets the Micro Business criteria as regulated in this Law.
2. Small businesses are productive economic businesses that stand alone, which are carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or are part, either directly or indirectly, of medium or large businesses that meet Small Business criteria as intended in this Law.
3. Medium Enterprises are productive economic enterprises that stand alone, carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or are part, either directly or indirectly, of Small Businesses or Large Businesses with total assets, net or annual sales proceeds as regulated in this Law.

From the above regulations it can be concluded that business entities that meet the MSME criteria are individual business entities and business entities that are not subsidiaries or branches of companies that are owned, controlled or part of either directly or indirectly with small businesses or large businesses with net assets, or certain annual sales results.

Business entities in Indonesia are divided into 2, namely legal entity business entities and non-legal entity business entities. Legal entity business entities consist of Limited Liability Companies (regulated in the PT Law and Job Creation Law), Cooperatives (regulated in Law Number 17 of 2012 concerning Cooperatives), and Foundations (regulated in Law Number 28 of 2004 concerning Foundations). It can be concluded that the forms of business entities within the scope of Micro, Small and Medium Enterprises are very broad. This research will more specifically discuss limited liability companies specifically for MSMEs in the form of individual companies.

Changes in regulations regarding Limited Liability Companies expand the regulations regarding Limited Liability Companies, the presence of regulations regarding Individual Companies specifically for MSMEs can blur the conceptual boundaries between Limited Liability Companies and Individual Companies. In the history of company law, overseas the concept of a private company is already known, which is usually referred to as sole proprietorship or sole trader,³ which is usually used as an explanation of individual companies in countries that adhere to the common law legal system. The Job Creation Law regulates the existence of individual companies in Article 109 number 2 of the Job Creation Law, namely:

2. The provisions of Article 7 are amended to read as follows:

Article 7

- (1) The Company is established by 2 (two) or more people with a notarial deed made in Indonesian.
- (2) Every founder of the Company is obliged to take shares when the Company is founded.

² Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta: Kencana, h. 32.

³ Rudhi Prasetya, 2011, *Perseroan Terbatas Teori & Praktik*, Jakarta: Sinar Grafika, h. 10.

Liability of Individual Companies Against Third Party Losses

- (3) The provisions as intended in paragraph (2) do not apply in the context of Consolidation.
- (4) The Company obtains legal entity status after being registered with the Minister and obtaining proof of registration.
- (5) After the Company obtains legal entity status and there are less than 2 (two) shareholders, within a maximum period of 6 (six) months starting from that situation, the shareholders concerned are obliged to:
 - a. transfer some of its shares to other people; or
 - b. The company issues new shares to other people.
- (6) In the event that the time period as intended in paragraph (5) has been exceeded, the remaining shareholders are less than 2 (two) people:
 - a. shareholders are personally responsible for all obligations and losses of the Company; And
 - b. at the request of interested parties, the district court can dissolve the Company.
- (7) Provisions requiring a Company to be established by 2 (two) or more people as intended in paragraph (1), paragraph (5), and paragraph (6) do not apply to:
 - a. Persero whose shares are all owned by the state;
 - b. Regional owned enterprises;
 - c. Village Owned Enterprises;
 - d. Companies that manage stock exchanges, clearing and guarantee institutions, deposit and settlement institutions, and other institutions in accordance with the Law on Capital Markets; or
 - e. Companies that meet the criteria for Micro and Small Enterprises.
- (8) Micro and Small Enterprises as referred to in paragraph (7) letter e are Micro and Small Enterprises as regulated in the laws and regulations concerning Micro and Small Enterprises.

Based on the exceptions in the article above, the Job Creation Law makes it possible to establish a Limited Liability Company by one person, with shareholders and management of the company carried out by the same person. This provision is in stark contrast to the arrangements currently regulated in the PT Law, namely that limited liability companies are established on the basis of an agreement established by a minimum of two people. The concept of a private company also contradicts the theory of corporate personality. The theory of corporate personality is a theory that assumes that companies can take legal action and be held accountable like humans.⁴ One of them is contract theory. The contract theory states that the company as a legal entity is considered to be a contract between the shareholders.⁵

The above confirms that the PT Law regulates companies as capital partnerships and are established based on an agreement. Based on the explanation above, it can be understood that the basic concept of a Private Company regulated in the Job Creation Law is clearly different from a Limited Liability Company in the PT Law. Basically, the choice to do business in the form of a sole proprietorship or company is based on the ease of doing business. With the qualification that it can be formed by only one person, this individual company does not require a deed of agreement for its establishment or the approval of other parties for dissolution.

Individual Companies obtain legal entity status after being registered with the Minister and receiving a registration certificate electronically, this is regulated in Article 6 paragraph (3) PP Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Changes and Dissolution of Companies that Meet the Criteria for Micro Businesses and Small (hereinafter referred to as PP on Establishment of Individual Companies). Individual Companies that have obtained legal entity status are announced by the Ministry of Law and Human Rights on the official website of the Directorate General of General Legal Administration (AHU) as fulfilling the principle of publicity, this is stated in Article 6 paragraph (4) of the Regulation on the Establishment of Individual Companies.

Regulations regarding Taxation of Individual Companies according to the Job Creation Law are included in the Limited Liability Company category. This is regulated in Article 109 Article 1 number 1 of the Job Creation Law where individual companies are included in the scope of limited liability companies so that taxes from individual companies are included in the corporate tax qualification.

Knowledge regarding company law has been developing for a long time, Rudhy Prasetya said that limited companies have three dominant characteristics, the dominant characteristics of limited companies according to Rudhy Prasetya are:⁶

1. The liability that arises is solely borne by the assets accumulated in the association.

This is related to the company's status as a legal entity which is considered a separate legal subject separate from individual shareholders, where liability in a Limited Liability Company is only limited to the paid-in capital.⁷ This characteristic is the characteristic that can most attract investors to invest in the form of a Limited Liability Company. A Limited Liability Company

⁴ Yahya Harahap, *Hukum Perseroan Terbatas*, Jakarta: Sinar Grafika, Jakarta, h. 52.

⁵ *Ibid*, h. 56.

⁶ Rudhy Prasetya, *op.cit.*, h. 12.

⁷ *op.cit.*, h. 12.

Liability of Individual Companies Against Third Party Losses

has the nature of a capital association where the liability that arises and losses are only limited to the capital paid in and does not involve personal assets.

2. The nature of mobility regarding participation rights.

This mobility of participation rights is intended as flexibility for each shareholder to take part in a limited liability company. Participation in a limited liability company is in the form of shares. The good thing about the mobility of participation rights is that the stability of the capital that has been accumulated can be maintained and not scattered, through the mobility of participation rights. Potential difficulties that occur with the concept of a firm in its nature as an association of people can then be avoided, for example, if a shareholder dies, it can be transferred directly to his heirs or if the heirs do not wish to continue their participation, they can then transfer it to another interested party.⁸ Apart from that, conditions such as renewing the establishment of a limited liability company every time a member dies and capital stability that is difficult to maintain which often occurs in the form of a Limited Liability Company can also be avoided considering the mobility of participation rights held by a Limited Liability Company.

3. The principle of management through an organ.

The management of a Limited Liability Company in accordance with the provisions of the applicable Legislation is carried out by an organ, where this provision means that the management cannot then be carried out by shareholders, but by a separate institution whose position is separate from that of shareholders.⁹

A Limited Liability Company is like a human body which consists of organs, while the organs in a Limited Liability Company according to the 1995 Limited Liability Company Law to the Limited Liability Company Law consist of three organs, namely: General Meeting of Shareholders (GMS), Directors and Board of Commissioners. which then runs the activities of the Limited Liability Company including the functions of policy making, implementation and supervision.

In PP 8 of 2021 Article 7 paragraph (2) letter g, the requirements for establishing an individual company regulate registration, it is stated that you must fill in the full name, place and date of birth, occupation, place of residence, population identification number and taxpayer identification number of the founder, director and holder. individual company shares.

This in itself is contrary to the PT Law and Article 109 article 1 number 2 of the Job Creation Law which states that the Company Organs are the General Meeting of Shareholders, Directors and Board of Commissioners. The position of the PP is in accordance with the preference principle of *lex superiori derogate legi inferiori*, which means that higher statutory regulations cancel out lower statutory regulations. The following table compares the regulations regarding company organs from the regulations regarding limited liability companies:

Comparison Table of Limited Liability Company Organs from time to time

	KUHD	UU PT 95	UU PT	UU Cipta Kerja
Directors	Must exist	Must exist	Must exist	Must exist
General Meeting of Shareholders	Must exist	Must exist	Must exist	Must exist
Commissioner	required (Article 44)	Must have (Article 94 paragraph (2) For companies whose business sector is mobilizing public funds, companies that issue debt acknowledgment letters, or public companies are required to have at least two Commissioners)	Must have There is an addition for Limited Liability Companies that carry out business activities based on sharia principles, apart from having a Board of Commissioners, they are also required to have a Sharia Board of Commissioners (Article 109 of the PT Law)	Article 7 paragraphs (1) and (2) PP No. 8 of 2021 concerning Company Authorized Capital and Registration of Establishment, Changes and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses: There is no obligation to fill in commissioner data, only Directors and Shareholders data (combined in one person)

The preference principle used by researchers to study this rule is the principle of *lex specialis derogate legi generalis*. This principle means that specific laws override general laws. Then regarding the principle of *lex specialis derogat legi generalis* Bagir Manan opined:¹⁰

⁸ *op.cit.*, h. 15.

⁹

¹⁰ Bagir Manan, 2004, *Hukum Positif Indonesia (Suatu Kajian Teoritik)*, Yogyakarta: FH UII Press, h. 58.

Liability of Individual Companies Against Third Party Losses

1. The provisions found in general legal rules remain valid, except for those specifically regulated in the special legal rules
2. The provisions of the *lex specialis* must be equivalent to the provisions of the *lex generalis* (law with law)
3. The provisions of the *lex specialis* must be in the same legal environment (regime) as the *lex generalis*. for example: The Commercial Law Book (KUH Dagang) is the *lex specialis* of the Civil Law Book (KUH Perdata) because it is in the same legal environment, namely the civil law environment.

The regulations regarding individual companies in the Job Creation Law do not regulate anything more specific than what is regulated in the PT Law because the Job Creation Law only updates the PT Law. The conclusion that researchers can draw is that the regulations regarding Individual Companies in PP 8 of 2021 are contrary to the Job Creation Law and the PT Law.

B. Liability of Individual Companies Specifically for Micro, Small and Medium Enterprises Against Third Parties

Individual companies specifically for MSMEs have the same liability as ordinary limited liability companies because they have the same nature, namely having limited liability limited to the paid-up capital. Civil liability of individual companies is regulated in Article 153 J of the Job Creation Law which reads:

Article 153 J

- 1) Company Shareholders for micro and small businesses are not personally responsible for agreements made on behalf of the Company and are not responsible for company losses exceeding the shares owned.
- 2) The provisions as intended in paragraph (1) do not apply if:
 - a) the requirements for the company as a legal entity have not been or are not fulfilled;
 - b) the shareholder concerned, whether directly or indirectly, in bad faith, uses the company for personal interests;
 - c) the shareholders concerned are involved in unlawful acts committed by the company; or
 - d) the shareholder concerned, either directly or indirectly, unlawfully uses the company's assets, resulting in the company's assets being insufficient to pay off the company's debts.

The provisions in Article 153 letter J of the Job Creation Law which are binding for individual companies are the same as the liability of Limited Liability Companies which is regulated by Article 3 of the PT Law, namely regarding the application of the doctrine of piercing the corporate veil. According to the researcher's observations, there has been no significant change in the regulations regarding corporate liability. Even though an Individual Company only consists of one person, the researcher would like to discuss this further regarding modern doctrinal views on limited liability companies and theories regarding Limited Liability Companies which continue to develop over time.

The doctrine of piercing the corporate veil. Limited liability is not absolutely absolute, there are times when company management cannot be separated from limited liability. This is regulated in the PT Law in Article 3 paragraph (2) and Article 97 paragraph (3) and as written in the previous discussion in the Copyright Law The work of Article 153 J contains the doctrine of piercing the corporate veil where directors are fully responsible when the person concerned is guilty or negligent in carrying out their duties (not carrying out their duties in good faith).

Things that are done in violation of good faith include: company organs not carrying out their duties as regulated in the applicable laws and regulations, taking actions that are not in accordance with the company's articles of association. Apart from violating statutory regulations and the company's articles of association, piercing the corporate veil also applies if it violates *ultra vires* and fiduciary duty.

The *Ultra Vires* Doctrine was triggered by developments in the business world in this modern era that demand new legal regulations that support healthy business behavior. Legal regulations in the business sector are expected to develop in line with developments over time. The more business develops, the more violations there are such as cheating, deception, fraud and the like. For this reason, in Indonesia, through the PT Law, modern doctrines regarding company law are included, one of which is *ultra vires*.

Ultra vires in Latin means exceeding the power or authority granted by law. This doctrine occurs when a limited liability company's authority exceeds the applicable laws and regulations, the provisions of the company's articles of association or the general meeting of shareholders.¹¹ The terminology *ultra vires* is used for company actions (carried out by the board of directors and board of commissioners). Examples of the company's actions include:¹²

1. Multiple positions for Directors and Commissioners in several companies in the same business group which could result in conflict of interest.
2. Companies ignore many new legal provisions, tend to be lazy to adapt policies to newly issued regulations because it costs a lot of money. This is usually related to licensing.
3. The financial recording system does not comply with general standards, this results in unknown financial leaks within the company.
4. Directors and Commissioners are appointed not in accordance with their field of expertise.

¹¹ Zainal Wira Pria Asikin, 2016, *Pengantar Hukum Perusahaan*, Jakarta: Kencana Prenada Media Group, 2016, h. 233.

¹² *ibid.*

Liability of Individual Companies Against Third Party Losses

5. There are many practices of nominee agreements or borrowing names to control shares.

One source of authority for company organs comes from the Company's Articles of Association. According to Rudhy Prasetya, with the ultra vires doctrine, the articles of association of a company are not only binding internally on the company but also binding on third parties.¹³

In the Job Creation Law, the implementation of the ultra vires doctrine is contained in Article 153 B of the Job Creation Law and Article 7 PP Number 8 of 2021, this article regulates the statement of establishment of an individual company. In this article it regulates what must be included in the statement of establishment. Several things that must be included in the founding statement include aims and objectives, as well as business activities. This article protects third parties when carrying out transactions with individual companies. By including business activities, third parties can be careful if directors of individual companies carry out business activities other than the registered business activities.

The explanation of the principle of fiduciary duty is that every member of the board of directors is obliged to carry out the management of the company. The obligation to carry out must also be carried out in good faith (good faith, in Dutch *te goede trouw*).

The meaning of good faith in managing a company has a broader meaning, including that every organ of the company must be trustworthy (must always be *bona fide*) and must always be honest (must always be honest).¹⁴

In the PT Law the regulations regarding fiduciary duty are contained in Article 97 paragraph (2) for Directors which reads:

Article 97

- 1) The Board of Directors is responsible for the management of the Company as intended in Article 92 paragraph (1).
- 2) The management as referred to in paragraph (1), must be carried out by every member of the Board of Directors in good faith and full responsibility.

Meanwhile, for the Board of Commissioners, fiduciary duties are regulated in Article 114 paragraph (2) of the PT Law which reads:

Article 114

- 1) The Board of Commissioners is responsible for supervising the Company as intended in Article 108 paragraph (1)
- 2) Each member of the Board of Commissioners is obliged to carry out their duties of supervision and providing advice to the Board of Directors in good faith, prudence and responsibility as intended in Article 108 paragraph (1) for the interests of the Company and in accordance with the aims and objectives of the Company.

In the Job Creation Law for Individual Companies this principle is not explicitly regulated, researchers can only draw conclusions that this principle is regulated in Article 153 F of the Job Creation Law which reads:

Article 153 F

- 1) Company Directors for Micro and Small Enterprises as intended in Article 153 A must prepare financial reports in order to realize good Corporate Governance.
- 2) Further provisions regarding the obligation to prepare financial reports are regulated in Government Regulations

Furthermore, in Article 10 PP 8 of 2021 it is regulated that Individual Companies are required to submit financial reports every year (current accounting period) and in Article 11 (Ministry of Law and Human Rights) publish proof of receipt of financial reports electronically. If an Individual Company does not submit financial reports, the Minister will impose administrative sanctions in the form of a written warning, termination of access rights or services; or revocation of legal entity status.

According to researchers, the application of the principle of fiduciary duty in individual companies as regulated in the Job Creation Law is not optimal because there is no Commissioner organ. Supervision of individual companies from the Job Creation Law and PP Number 8 of 2021 is classified as weak because there are only administrative sanctions. In the absence of a Board of Commissioners to carry out checks and balances on Shareholders and Directors who are one person, the principles of good corporate governance are difficult to achieve and will be detrimental to third parties when carrying out transactions with individual companies.

V. CLOSING

A. Conclusion

The operation of individual companies specifically for MSMEs that have incomplete company organs is regulated through the Job Creation Law and Government Regulation number 8 of 2021. After researchers studied it, it turned out that these regulations were in conflict with the PT Law and the Job Creation Law itself. This clashes with the principle of preference between PP Number 8 of 2021 and the Job Creation Law. Regulations regarding the liability of limited companies from the KUHD to the Job Creation Law have not changed much, the creators of the law always make regulations that protect the position of limited companies as long as the organs in the limited company do not make mistakes/do not violate the authority obtained from the company's articles

¹³ Rudhi Prasetya, 2014, *Perseroan Terbatas Teori & Praktik*, Jakarta: Sinar Grafika, h. 27.

¹⁴ M. Yahya Harahap, *op.cit.*, h. 374.

Liability of Individual Companies Against Third Party Losses

of association or statutory regulations - valid invitation. With the promulgation of the Job Creation Law which expands the definition of a Limited Liability Company to the existence of an Individual Company, according to researchers, the existence of an Individual Company whose shares are only owned by one person means that the Individual Company does not have a good system of checks and balances, thereby potentially harming third parties.

B. Recommendation

Regulations regarding individual companies in other countries have been around longer than Indonesia, but the rules regarding individual companies in Indonesia are very basic and need to be developed. It is easy to set up an individual company in Indonesia, although it is intended to make business easier, but this rule is very easy to abuse. It is good to set up an individual company specifically for MSMEs, given several requirements that can be used as the first filter to avoid misuse of the convenience created by this rule, things that examples include:

1. Before establishing an individual company, the party establishing it must show a business permit.
2. Prospective founders must also report their assets so that the government can find out whether the prospective founder is truly in the MSME category or not.
3. There is an obligation to audit individual company finances to an accounting firm, and if there are suspicious findings, the shareholders are fully responsible for the individual company's debts.

In running a company there are principles of Good Corporate Governance, which include modern doctrines regarding Limited Liability Companies such as piercing the corporate veil, ultra vires, fiduciary duty, and business judgment rules. Supervision of individual company activities without a commissioner and only supervised by the Ministry of Law and Human Rights will feel very unequal. The establishment of an Individual Company is also made very easy considering that the purpose of establishing this regulation is to support ease of doing business, but this ease is prone to misuse and legal smuggling. The researcher's suggestion is that the establishment requirements be made more detailed and strict so that the potential for legal smuggling is reduced. According to what the researchers wrote above, it would be good for Indonesia to add new qualifications regarding establishment rules, such as one person can only establish one individual company.

REFERENCES

Legislation:

- 1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- 2) Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja dirubah dengan Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja Menjadi Undang-Undang.
- 3) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
- 4) Undang-Undang Nomor 20 Tahun 2008 tentang Usaha Mikro, Kecil dan Menengah.
- 5) Peraturan Pemerintah Nomor 7 Tahun 2021 tentang Kemudahan, Perlindungan dan Pemberdayaan Koperasi dan Usaha Mikro, Kecil dan Menengah.
- 6) Peraturan Pemerintah Nomor 8 Tahun 2021 tentang Modal Dasar Perseroan serta Pendaftaran Perubahan, dan Pembubaran Perseroan yang Memenuhi Kriteria untuk Usaha Mikro dan Kecil.

Books:

- 1) Bagir Manan, 2004, *Hukum Positif Indonesia (Suatu Kajian Teoritik)*, Yogyakarta: FH UII Press.
- 2) Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta: Kencana, h. 32.
- 3) Rudhi Prasetya, 2011, *Perseroan Terbatas Teori & Praktik*, Jakarta: Sinar Grafika.
- 4) Rudhi Prasetya, 2014, *Perseroan Terbatas Teori & Praktik*, Jakarta: Sinar Grafika.
- 5) Yahya Harahap, *Hukum Perseroan Terbatas*, Jakarta: Sinar Grafika, Jakarta.
- 6) Zainal Wira Pria Asikin, 2016, *Pengantar Hukum Perusahaan*, Jakarta: Kencana Prenada Media Group, 2016.

Website:

- 7) David Wahyudi, "Tujuan Dibentuknya Undang-Undang Cipta Kerja", www.tribratanews.bengkulu.polro.go.id, acces 15 Januari 2023.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.