

EXISTENCE OF INDIVIDUAL LIMITED LIABILITY COMPANY AS INCORPORATED COMPANY IN INDONESIA

Ramlan¹, Dewi Kartika²

Universitas Muhammadiyah Sumatera Utara

email: ramlan@umsu.ac.id

Abstract: This writing aims to see whether it is appropriate for a sole proprietorship company to be said to be a legal entity. The type of research used is normative legal research with a legal approach and a conceptual approach, as well as the nature of the research is explanatory and uses secondary data with primary legal materials of the UUCK and UUPT and is analyzed qualitatively. A company is said to be a legal entity if it has the following elements; Having an association in a broad sense is an association of people who feel they have a common interest based on an agreed agreement. Legal entities can carry out legal acts with the help of their organs consisting of humans. Humans and legal entities are both legal subjects, so they are both holders of legal rights and obligations. In addition, legal entities have assets that come from the income of their members and are separate from the personal assets of their members. Legal entities can also act on their own and can perform a legal act on their own, so that legal entities can sue and be sued in court. To obtain a legal entity, a company must obtain approval from the Minister of Law and Human Rights. Based on these elements, a sole proprietorship can be said to be a quasi-legal entity.

Keywords: *Position, Legal Entity, Individual Company*

Introduction

On February 13, 2020, the Government submitted the Job Creation Bill to the House of Representatives of the Republic of Indonesia. On October 5, 2020, the House of Representatives passed the omnibus law on the Job Creation Bill into Law Number 11 of 2020 concerning Job Creation through a plenary meeting. Then it was revised after the Constitutional Court Decision Number 91/PUU-XVII/2020 became a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, which was then re-established as Law Number 6 of 2023 concerning Job Creation (UUCK).

In the UUCK, one of the amendments is Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) which is contained in the Ease of Doing Business cluster, Part Five, Article 109 of the UUCK. This is related to the ease of doing business for micro, small, and medium enterprises (MSMEs). As an implication, the UUCK changes the definition of company in Article 1 number 1 of the UUPT and inserts 10 articles regarding Individual Limited Liability Companies that meet the criteria for micro and small enterprises (MSEs) as regulated in Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (UUUMKM). (Yuliana Duti Harahap, Budi Santoso, Mujiono Hafidh Prasetyo, 2021).

Based on the UUCK, the Company can be established with only one founder, as stipulated in Article 135 letter A paragraph (1) of the UUCK, which states that: "A company

that meets the criteria for Micro and Small Enterprises can be established by 1 (one) person".

The substance of the UUCK significantly changes the law on the establishment of Limited Liability Companies in Indonesia, especially those regulated in the UUPJ. Based on the UUCK, the definition of a Limited Liability Company was amended by adding the phrase Individual Legal Entity that meets the criteria for MSMEs as in the laws and regulations regarding MSMEs. Based on the definition of a Limited Liability Company, it is possible to have a Limited Liability Company in the form of an Individual Legal Entity that meets the MSE criteria. This means that a company that is a legal entity can be established by one person.

Chidir Ali (2005: 21) said that legal entities as legal subjects contain the following elements, namely; An association of people (organization), can carry out legal acts (*rechtshandeling*) in legal relationships (*rechtsbetrekking*), has its own property, has management, has rights and obligations, and can be sued or sued in front of the court. Purwosoetjpto (1982: 63) said that in the establishment of a legal entity, there must be a formal condition, namely the recognition of a state that recognizes an entity as a legal entity.

Based on the opinion of Chidir Ali and Purwosoetjpto, which is a legal entity associated with the formation of an Individual Company as a legal entity, it will be interesting to discuss the position of an Individual Company as a legal entity.

Literature Review

Legal subjects have a very important position and role in the field of law, especially civil law because legal subjects can have legal authority. The term legal subject comes from the Dutch translation, namely *rechtsubject* and in English it is called *law of subject* (Titik Triquulalan Tutik, 2008: 40). The subject of law consists of human beings and legal entities, legal entities themselves are divided into public legal entities and private legal entities (such as Limited Liability Companies/PTs, State Companies/PNs, Foundations, and Cooperatives). Ridwan Halim (1985: 29) said that human beings and legal entities according to the law can have rights and obligations, and are supporters of these rights and obligations.

The term legal entity in Indonesia is commonly used and even an official legal term, legal entity is a translation of the Dutch legal term "*rechtspersoon*", known in Latin as "*moralist persona*", and in English known as "*legal persons*" (Tami Rusli, 2017: 1-2).

According to Molengraaff as quoted by Jimly Asshiddiqie (2006: 29), legal entities are essentially the rights and obligations of their members together, and in them there is common property that cannot be divided. Each member is not only the owner as a person for each of his parts in an indivisible entity, but also as a joint owner of the entire property, so that each individual member is also the owner of the property organized in that legal entity.

R. Subekti said that a legal entity is basically a body or association that can have rights and do acts like a human being, as well as have its own wealth, can be sued or sued in front of a judge. Meanwhile, R. Rochmat Soemitro stated that a legal entity (*rechtspersoon*) is a body that has assets, rights and obligations like individuals (Salim, 2012: 16).

In accordance with the definition of a legal entity as a legal subject, according to the Supreme Court of Indonesia in its decision on economic criminal cases, it is argued that a legal entity cannot be confiscated. Thus, it is clear that legal entities as legal subjects, are not objects of law (Tami Rusli, 2017: 5-6).

Based on the above understanding, every legal entity that can be said to be legally responsible (*rechts-bevoegheid*), according to Jimly Asshiddiqie (2006: 77) must have five

main elements of a legal entity, namely: (1) Wealth that is separate from the wealth of other legal subjects. (2) Having certain ideal purposes that are not contrary to laws and regulations. (3) Have their own interests in legal traffic. (4) There is an organization of management that is in an orderly manner according to the applicable laws and regulations and its internal regulations. (5) Registered as a legal entity in accordance with the applicable laws and regulations.

Salim (2012: 26 jo 2008: 26) argues that the elements of a legal entity include; has an association, has a specific purpose, has rights and obligations, and has the right to sue and be sued. Meanwhile, H.M.N Purwosoetjipto (1982: 63) stated that there are several conditions for an entity to be categorized as a legal entity, which includes: (1) The existence of assets (rights) with a certain purpose that is separate from the personal wealth of the allies or founders of the agency. Strictly speaking, there is a separation of corporate wealth from the personal wealth of allies. (2) The interests that are the end are the common interests. (3) The existence of several people as administrators of the body.

The three elements conveyed by H.M.N Purwosoetjipto are material (substantive) elements for a legal entity. Then, another requirement that is no less important is the formal requirement, namely the recognition of a state that recognizes an entity as a legal entity (Tami Rusli, 2017: 8).

Meanwhile, Individual Companies, according to Zainal Asikin and Wira Pria Suhartana (2016: 6), are companies run by one businessman. The company was founded by one person, capitalized by one person and run by one person. Ramlan (2019: 34) said that individual companies can be divided into 2 (two), namely:

1. An individual company owned by an individual who personally acts as an entrepreneur to manage and manage and directly supervise his or her own company and is not a legal entity or a partnership.

A small individual company that is managed and run or managed by its own person, or that employs only its own family members, and that is really just to meet the daily needs of its owner, and is not required to have a business license or a certificate equivalent to it issued by an authorized agency.

Method

The type of research used is normative legal research with a conceptual approach. Marzuki said that the normative law research method, which is the object/focus of his research study, is the product of laws and regulations (Surya Perdana and Ismail Koto, 2024: 25). Peter Mahmud Marzuki said that the normative law research method is a research method on legal rules (Arliman S, 2018: 118). Meanwhile, Soerjono Soekanto and Sri Mamudji (2003: 13-14) said that normative law research is research conducted by researching literature materials or secondary data (Aziz, 2012: 23).

The conceptual approach is carried out because researchers continue to conduct research based on existing legal rules (Ramlan, et al., 2023: 207). Bahder Johan (2008: 92) stated that the conceptual approach is a study of legal concepts. The legal institution referred to here is an Individual Company.

The nature of the research used is explanatory research. Abdulkadir Muhammad (2004: 50) said that explanatory legal study is an explanatory legal study that is explanatory and aims to test a theory or hypothesis in order to strengthen or even reject the theory of an individual company's legal entity based on existing research. Furthermore, the data used is secondary data, especially from primary legal materials such as Law Number 11 of 2020

concerning Job Creation, Law Number 40 of 2007 concerning Limited Liability Companies. Furthermore, it is analyzed using qualitative analysis where the conclusion is outlined in the form of sentences related to the legal entity of the Individual Company.

Results and Discussion

A company can be said to be a legal entity if it has the elements; having an association, the interests that are the goal are common interests, the existence of several people as administrators of the body, having rights and obligations, having property separate from the personal wealth of the allies or founders of the body, and having the right to sue and be sued, as well as the recognition of a state that recognizes an entity as a legal entity. Furthermore, it will be analyzed in the following description:

1. Have a Society

According to Chaidir Ali (2005: 119), the term association comes from the Dutch language *vereniging*, the German language *verein*, and the English language association itself. In this association or association several people who want to achieve a goal in the non-economic field (not for profit) agree to enter into a cooperation whose form and method are set out in the "articles of association" or "*regulations*" or "*statutes*". In Indonesian, the word association is often also referred to by many names, including association, assembly, engagement, bond, unity, union and others.

Wirjono Prodjodikoro (1985: 1) argues that an association in a broad sense is a gathering of individuals or people who feel they have an interest, which can only or may be more satisfying if they gather and cooperate with each other. There are four types of associations that aim to pursue profits, namely "civil partnerships (*maatschap*)", firm alliances (*vennootschap onder firma*), *commanditaire vennootschap* (*commanditaire vennootschap*) and limited liability companies (*naamlooze vennootschap*).

When viewed from the above definition of *purkumpulan* as an element of a legal entity, a Sole Proprietorship Company does not have an association. As affirmed in the provisions of Article 109 of the Law which amends the provisions of Article 1 number 1 of the Constitution jo Article 1 number 1, Article 2 paragraph (1) letter b of Government Regulation No. 8/2021 jo Article 1 number 1, number 4 of the Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Terms and Procedures for Registration of Establishment, Change, and Dissolution of Legal Entities of Limited Liability Companies (Permenkumham No. 21/2021), expressly states that the establishment of an Individual Company is established by 1 (one) person.

2. Interests that Become Goals are Common Interests

Common interest means interests and other property rights to something that is owned or acquired by both parties based on an agreed agreement. It can also be said that the common interest is a decision that has been carefully thought out, to realize the desire that is desired together.

In this case, it means that the parties agree to cooperate in good faith to run the business together and take such actions as may be necessary so that the business is run to benefit such as the expected purpose of providing benefits to the founders. **Therefore, the parties to the agreement to establish and run a business are carried out in proportion to their respective common interests, and are entitled to all rights and benefits of the business, namely seeking profits, and being responsible for all obligations related to the business.**

This means that in establishing a legal entity business, it cannot be established by only one person, but at least it is established by two people to achieve the goal of common

interests. These common interests aim to achieve the same goal. Each member in the business has duties and roles that must be fulfilled so that common goals will be easily achieved.

The concept of common interest is attached to the principle of common interest as upheld in the Civil Code, which can be seen in the provisions of Article 1628 that it does not allow an ally to prioritize personal interests over common interests. Furthermore, the common interest can be seen in Article 1629 that if one of the allies has received all of his shares and a joint receivable, then the debtor falls into bankruptcy, then the ally is obliged to put back what he has received into the union treasury (Ida Nadirah, 2019: 20). Meanwhile, in the company of Individual Companies, this was not found, because it was founded by 1 (one) person.

3. The existence of several people as board members

According to some people, it means that in establishing a business entity, the number of founders is not necessarily many (but the number is more than two, but not many). If referring to a Limited Liability Company based on the Constitution, then it is certain that there are not a few business entity administrators, because here there is an organ of the GMS which is a forum for shareholders, then there is the commissioner organ as the supervisory organ in the Limited Liability Company, and there is the Board of Directors as the organ that runs (management) of the Limited Liability Company (Ida Nadira, 2019: 52) which works in accordance with the articles of association and the results of the GMS decision.

As a legal subject besides a human being, a legal entity can only perform legal acts with the help of its organs, which consist of human beings. As for the scope and way for the organs to represent the legal entity, it is regulated in the articles of association, regulations, or decisions of the members' meeting (R. Ali Ridho, 2001: 53).

The Articles of Association, as a reflection of the orderly state of an organization, determine the organization's rules of conduct in its activities and if there are matters that have not been accommodated in the Articles of Association, it can be regulated through decisions in the general meeting of shareholders (Chairuddin Ismail, 2005: 23). Meanwhile, a Sole Proprietorship Company does not have this organ as a legal entity. In the provisions of Article 7 paragraph (2) letter g of Government Regulation No. 8/2021, it is emphasized that the founder of an Individual Company is also a Director and a shareholder.

4. Have Rights and Obligations

In law, the term person includes personal beings, namely human beings (*natuurlijk persoon*) and legal entities (*moralist persona, legal person, legal entity, rechtspersoon*). Both are legal subjects, so both are holders of legal rights and obligations. J. Satrio (1999: 13) said that legal entities have rights and/or obligations that are recognized by law.

Legal entities are the subject of man-made laws based on applicable law. In order to act according to the law, the legal entity is taken care of by the management stipulated in its articles of association, as the authorized representative of the legal entity. This means that the actions of the management are the actions of legal entities. The actions of the management are always on behalf of the legal entity, not on behalf of the personal management of the management.

All obligations arising from the actions of the management are legal entity obligations, which are charged to the legal entity's assets. On the contrary, all rights obtained from the actions of the management are the rights of legal entities that become the assets of legal entities (Abdulkadir Muhammad, 2006: 103).

5. Having Wealth Separate from the Founders

The assets of a legal entity are obtained from the members, the existence of assets is intended as a tool to achieve certain goals rather than the legal entity concerned. Wealth, although derived from the income of its members, is separate from the personal property of its members. The personal actions of its members do not bind the assets, on the contrary, the acts of the legal entity represented by the management do not bind the assets of its members (Ridwan Syahrani, 2000: 61).

The element of wealth, which is separate and separate from the ownership of other legal subjects, is the most basic element in a body to be called an independent *legal entity*. The separate element of wealth is an important requirement for the legal entity concerned; (a) as a means for him to pursue the purpose of his establishment or formation. (b) may be the object of a claim; and at the same time as (c) an object of guarantee for anyone or other parties in establishing legal relations with the legal entity concerned (Jimly Asshiddiqie, 2006: 71).

According to Arifin P. Soeria Atmadja (2016: 124), the separate legal entity's wealth has consequences, among others:

- a. the personal creditors of the members of the legal entity concerned do not have the right to claim the assets of the legal entity;
- b. Individual members cannot collect legal entity receivables against third parties;
- c. compensation between personal debt and legal entity debt is not possible;
- d. legal relationships, both agreements and processes between members and legal entities, are carried out as well as between legal entities and third parties;
- e. In bankruptcy, only the creditors of the legal entity can claim separate assets.

In the theory of purposeful wealth (*doelvermogen theorie*), every legal entity has wealth that aims to be used for certain interests, the wealth is managed and used for certain purposes, and the purpose of the legal entity is an object protected by law (Abdulkadir Muhammad, 2006: 101).

6. Have the Right to Sue and Be Sued

Because legal entities can act on their own and can do a legal act on their own, legal entities should be able to sue and be sued in court because in their actions they harm other parties, just like individual human beings who can commit acts that cannot be separated from mistakes, both intentional and unintentional.

Regarding the element of wealth that is separate from its members which is used to achieve the essence of the goals that have been proclaimed at the beginning of the establishment of a legal entity, a legal entity has its own interests. Soenawar Soekowati views that these interests are subjective rights that arise as a result of legal events, thus these interests become rights protected by law (R. Ali Ridho, 2001: 52).

These interests are the basis for a legal entity to be able to prosecute and defend its interests against third parties in legal associations. Meyers added that this interest must also be stable (R. Ali Ridho, 2001: 53).

7. There is recognition from the state as a legal entity

In the provisions of Article 109 of the UUCK which amends the provisions of Article 7 paragraph (4) of the UUPT, it is expressly stated that the company obtains the status of a legal entity after being registered with the Minister and obtaining proof of registration. Thus, the company's separate assets have been separated from the company's founders. Likewise, the responsibility of the management for the company's debt is only limited to the capital invested, not to the personal assets of the management.

Likewise for individual companies, based on the provisions of Article 6 paragraphs (3) and (4) of Government Regulation No. 8/2021, individual companies obtain legal entity status after being registered with the Minister and obtaining an electronic registration certificate. Individual companies that have obtained legal entity status are announced by the Minister on the official website of the directorate general which carries out duties and functions in the field of general legal administration.

Conclusion:

Based on the elements of a legal entity described above, it can be said that a sole proprietorship cannot be said to be a legal entity, because only the element of recognition from the government is obtained, while the other elements are not. So in this case, a sole proprietorship company can be said to be a "quasi-legal entity (quasi-legal entity)", because none of the elements as a legal entity are owned by an individual company that is declared as a legal entity.

Bibliography

- Ali, Chidir. (2005). Legal Entity. Bandung: Alumni.
- Asikin, Zainal., & Wira Pria Suhartana. (2016). Introduction to Corporate Law. First Edition. Jakarta: Prenada Media Group.
- Asshiddiqie, Jimly. (2006). Development and Consolidation of State Institutions after Reform, Second Edition, Jakarta: Secretary General and Clerk, MKRI.
- Atmadja, Arifin P Soeria. (2016). State Financial Accountability Mechanism. Jakarta: Gramedia.
- Aziz, Noor Muhammad. (2012). "The Urgency of Legal Research and Assessment in the Formation of Laws and Regulations", Journal of Rechtsvinding Media for National Legal Development, Vol. 1, No. 1. <https://rechtsvinding.bphn.go.id/artikel/ART%20%20JRV%20VOL%201%20NO%201%20PROTECT.pd>.
- Halim, A. Ridwan. (1985). Civil Law in Questions and Answers, Second Edition, Jakarta: Ghalia Indonesia.
- Harahap, Yuliana Duti., Santoso, Budi., & Prasetyo, Mujiono Hafidh. (2021). "Establishment of Individual Limited Liability Companies and Legal Responsibilities of Shareholders Based on the Job Creation Law", Notary, Vol. 14 No. 2, p. 726. <file:///C:/Users/DELL/Downloads/43800-135614-1-SM-1.pdf>.
- HS, Salim. (2008). Introduction to Written Civil Law (BW), Fifth Edition. Jakarta: Sinar Grafika.
- (2012). The Development of Theory in Law, Second Edition, Jakarta: PT RajaGrafindo Persada.
- Ismail, Chairuddin. (2005). Directors and Commissioners in Unlawful Acts by Limited Liability Companies. First Printing, Jakarta: Merlyn Press.
- Muhammad, Abdulkadir. (2004). Law and Legal Research. Bandung: PT Citra Aditya Bakti.
- (2006). Indonesian Company Law. Print III. Bandung: PT. Citra Aditya Bakti.
- Nadira, Ida. (2019). Textbook of Indonesian Commercial and Business Law. First Print. Medan: Pustaka Prima.
- Nasution, Bahder Johan. (2008). Legal Research Methods. First Printing. Bandung: Mandar Maju.
- Perdana, Surya., and Ismail Koto. (2024). "Providing Legal Protection for Consumers Against Standard Clauses/One-sided Agreements Made by Business Actors", DE LEGA

- LATA: Jurnal Sains Undang, Vol. 9 No. 1, p. 25.
file:///C:/Users/DELL/Downloads/18064-51223-2-PB.pdf.
- Prodjodikoro, Wirjono. (1985). Law of Associations, Companies and Cooperatives in Indonesia. Jakarta: Dian Rakyat.
- Purwosoetjpto, H.M.N. (1982). Definition of the Principal of Indonesian Commercial Law, Volume 2, Jakarta: Djambatan.
- Ramlan. (2019). Corporate Law: Types of Companies in Indonesia. Medan: Pustaka Prima.
- Ramlan, Tengku Erwinsyahbana, and H. Surya Perdana. (2023). Legal Research Methods in Making Scientific Papers. First Print. Medan: UMSUPress.
- Ridho, R. Ali. (2001). Legal Entity and Position of Legal Entities of Companies, Associations, Cooperatives, Foundations, Waqf. Bandung: Alumni.
- Satrio, J. (1999). Personal Law, Part I Persoon Alamiah. Bandung: Citra Aditya Bakti.
- Soekanto, Soerjono., and Sri Mamudji. (2003). Normative Law Research: A Brief Review. Sixth Printing. Jakarta: RajaGrafindo Persada.
- Syahrani, Ridwan. (2000). The Intricacies and Principles of Civil Law. Bandung: Alumni.
- Tutik, Quarterly Point. (2008). Civil Law in the National Legal System, Jakarta: Prenada Media Group.