


Development of Limited Liability Companies after the Enactment of Law Number 6 of 2023 Concerning the Ratification of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation

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Abstract

This study aims to analyze the development of limited liability companies (LLCs) following the enactment of Law Number 6 of 2023, which ratifies Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation, and to explore the concept of The Private Individual Limited Company in Indonesia. The research employs a qualitative methodology, using a normative legal approach. The findings indicate that the Job Creation Law introduced a new legal entity, The Private Individual Limited Company, and altered the conventional paradigm of LLCs. Previously, LLCs were understood as capital partnerships requiring at least two founders, formed through an agreement. However, under the new law, LLCs can now be established by a single individual, provided the company qualifies as a micro, small,

or medium enterprise (MSME). The concept of The Private Individual Limited Company allows a single person to establish an LLC, expanding the traditional understanding of LLCs as partnerships formed through agreements. However, this concept of single-person LLCs is not entirely new in Indonesia. Before the Job Creation Law, the Company Law (PT Law) already permitted such exceptions, allowing LLCs to be established by one person if the company's shares were wholly owned by the state, state-owned enterprises, or regional government-owned enterprises.

Keywords

Limited Liability Company, Individual Limited Liability Company, Job Creation

Introduction

President Joko Widodo has stated that Indonesia has an overwhelming number of regulations, totaling around 42,000, which include laws, government regulations, presidential regulations, ministerial regulations, gubernatorial regulations, and regulations from mayors or district heads. Many of these regulations are conflicting and overlapping. To address this issue, the government has initiated the drafting of a new law, the Job Creation Law, utilizing the omnibus law method. This approach consolidates 83 existing laws into a single law aimed at reorganizing regulations related to the economy, particularly in the area of investment.¹

This reform is necessary due to Indonesia's declining ranking in the Ease of Doing Business index released by the World Bank from 2015 to 2020. The report indicates that, among ASEAN countries, Indonesia ranks better only than Cambodia, Laos, and Myanmar, primarily due to four factors related to licensing issues, minority investor protection, cross-border trade facilitation, and contract enforcement.²

On November 2, 2020, the Job Creation Law was enacted as Law Number 11 of 2020 and took effect on the same day. It was later

¹ Hendra Kurniawan Putra, *Problematika Penerapan Omnibus Law Dalam Pembentukan Undang-Undang Dalam Sistem Peraturan Perundang-undangan Di Indonesia (Omnibus Law Diskursus Pengadopsiannya Ke Dalam Sistem Perundang-undangan Nasional)*, Editor: Ahmad Redi dan Ibnu Sina Chandranegara), PT. Rajagrafindo Persada, Depok, 2022

² Rio Christiawan, *Omnibus Law Teori Dan Penerapannya*, Sinar Grafika, Jakarta, 2021

replaced by Law Number 6 of 2023, which ratified the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. Despite the controversies surrounding its enactment, the law was established to resolve jurisdictional conflicts that hinder job creation and investment due to overlapping regulations.³

The omnibus law method aims to simultaneously amend multiple existing laws, thereby reducing regulatory overlap and streamlining the authority granted by these regulations. This is intended to enhance competitiveness through economic activities by addressing barriers to investment, making Indonesia a more attractive investment destination, and positively impacting job creation.⁴

The Job Creation Law consists of provisions divided into 11 sub-themes or clusters, including:⁵

1. Simplification of business licensing
2. Investment requirements
3. Employment
4. Empowerment and protection of micro, small, and medium enterprises (MSMEs)
5. Business facilitation
6. Support for research and innovation
7. Government administration
8. Imposition of sanctions
9. Land procurement
10. Investment and government projects
11. Economic zones

These sub-themes represent the provisions aimed at amending existing laws to strengthen Indonesia's economy and enhance its attractiveness for investment. The law not only seeks to attract foreign investors but also to stimulate investment activities among domestic investors, including MSMEs.

³ Ima Mayasari, "Kebijakan Reformasi Regulasi Melalui Implementasi Omnibus Law Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (2020): 1.

⁴ Erlangga Zakaria, "Penerapan Omnibus Law Dalam Sistem Legislasi Nasional Menurut Undang-Undang Nomor 13 Tahun 2022," *Innovative: Journal Of Social Science Research* 3, no. 3 (2023): 10719–33.

⁵ Jimly Asshiddiqie, *Omnibus Law Dan Penerapannya Di Indonesia*, Konstitusi Press, Jakarta, 2021

MSMEs play a crucial role in the national economy, contributing 60% to Indonesia's economy and providing 97% of jobs for the Indonesian population. However, they face challenges related to funding, information, and skills. To address these issues, the government, through the Job Creation Law, offers solutions to facilitate MSMEs in developing their businesses by amending the provisions of Law Number 40 of 2007 concerning Limited Liability Companies, resulting in the establishment of a new legal entity: the Individual Limited Liability Company.

The Individual Limited Liability Company is a new concept for the Indonesian public, although it has been recognized internationally as a One Person Company (OPC). The OPC was first introduced in Germany in 1982 under the term *Gesellschaft mit Beschränkter Haftung* (GmbH), which refers to a limited liability company that can be established by a single individual, as regulated by the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaft mit beschränkter Haftung*).

This development represents a significant departure from the traditional understanding of limited liability companies in Indonesia, as outlined in Law Number 40 of 2007 and its predecessor, Law Number 1 of 1995.⁶ Previously, a limited liability company in Indonesia was defined as a capital partnership that required a minimum of two individuals to establish it through an agreement. However, with the enactment of the Job Creation Law, it is now possible to establish a limited liability company with just one individual by means of a declaration of establishment.

Methods

The research method used in this study is qualitative, with a normative legal approach. This approach aims to identify issues arising from literature or reading materials sourced from library studies. The specific nature of the research presented in this paper is descriptive-analytical, providing an overview of the issues raised along with an analysis of potential solutions, thereby offering concrete explanations to address these problems. Data collection for this research utilizes library research, which involves documents from regulatory legislation

⁶ Anner Mangatur Sianipar, *Perkembangan Hukum PT Perorangan*, CV. Penerbit Qiara Media, Pasuruan, 2021

or similar sources, as well as literature from legal experts. Subsequently, the data is analyzed qualitatively and normatively, interpreting and constructing statements found within the regulatory documents.⁷

Result, Discussion and Analysis

A. Developments in Limited Liability Companies Following the Enactment of Law Number 6 of 2023 Concerning the Ratification of the Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation.

The enactment of the Job Creation Law represents the government's effort to restructure Indonesia's economy by promoting investment activities through amendments to regulations that are deemed obstructive. This initiative aims to positively impact the economy and create widespread job opportunities for the Indonesian populace. It highlights the role of law in economic development, illustrating the reciprocal relationship between law and economics, where each influences the other.⁸

To achieve these objectives, it is essential not only for the government to create regulatory frameworks but also for society to actively participate in entrepreneurial activities by establishing businesses, whether in the micro, small, and medium enterprises (MSME) sector or on a larger scale.

A company is an entity that engages in ongoing activities with the goal of generating profit. A business entity serves as an organization or corporate body that drives each endeavor, referred to as the legal form of the company. Essentially, there are two forms of business entities: unincorporated entities, such as partnerships and limited partnerships, and incorporated entities, which include limited liability companies and cooperatives.⁹

The distinction between unincorporated and incorporated entities can be found in the characteristics of incorporated entities, which

⁷ Komang Ayu Henny Achjar et al., *Metode Penelitian Kualitatif: Panduan Praktis Untuk Analisis Data Kualitatif Dan Studi Kasus* (PT. Sonpedia Publishing Indonesia, 2023).

⁸ Abdul Manan, *Peran Hukum Dalam Pembangunan Ekonomi*, Prenadamedia Group, Jakarta, 2018

⁹ Zainal Asikin dan L. Wira Pria Suhartana, *Pengantar Hukum Perusahaan*, Prenadamedia Group, Depok, 2018

include the separation of company assets from personal assets, a charter approved by the government, and representation by management.¹⁰

Limited liability companies are among the most favored forms of business entities. A limited liability company is a partnership formed by two or more individuals through an agreement to conduct business activities with capital divided into shares. Initially, the regulations governing limited liability companies were outlined in the Commercial Code dating back to the Dutch colonial era in Indonesia, which has now been in existence for over a hundred years. However, with the evolution of economic conditions and business activities, both nationally and internationally, the Commercial Code has become outdated and insufficient to meet contemporary demands. Furthermore, there remained classifications that favored certain segments of society, resulting in a dual legal framework for corporations in Indonesia.¹¹

To address the need for legal frameworks that align with current developments, Law Number 1 of 1995 concerning Limited Liability Companies was enacted on March 7, 1995, repealing Articles 36-46 of the Commercial Code and its amendments.

However, after twelve years of implementation, the Limited Liability Company Law was deemed inadequate to meet societal needs and legal developments due to economic conditions and the rapid advancement of knowledge, technology, and information in the era of globalization. Additionally, the demand for efficient services, legal certainty, and alignment with good corporate governance principles contributed to the call for reform and repeal of the previous law. Consequently, Law Number 40 of 2007 concerning Limited Liability Companies was enacted on August 16, 2007, refining and replacing Law Number 1 of 1995.¹²

In 2020, the Limited Liability Company Law underwent changes through the Job Creation Law. The impetus for this legislation was a World Bank report on the ease of investment in Indonesia from 2015 to 2020, which indicated a decline. Notably, among ASEAN countries, Indonesia ranked just above Cambodia, Laos, and Myanmar. To attract both foreign and domestic investors to invest in Indonesia, the government amended several laws related to investment activities through the Job Creation Law, employing an omnibus law method that comprises eleven sub-themes or clusters. One of these sub-themes

¹⁰ Erna Widjajati, *Hukum Perusahaan Dan Kepailitan Indonesia*, Jalur, Jakarta, 2016

¹¹ Munir Fuady, *Pengantar Hukum Bisnis Menata Bisnis Modern Di Era Global*, PT. Citra Aditya Bakti, Bandung, 2012

¹² Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, PT. Citra Aditya Bakti, Bandung, 2010

involved amendments to certain articles of the Limited Liability Company Law, specifically through Article 109 of the Job Creation Law.

Article 109 of the Job Creation Law modifies several provisions within the Limited Liability Company Law. Notably, it alters the definition of a Limited Liability Company found in Article 1, paragraph 1 of the previous law. The earlier definition stated:

“A Limited Liability Company, hereinafter referred to as a Company, is a legal entity that constitutes a capital partnership, established based on an agreement, conducting business activities with a capital base wholly divided into shares and fulfilling the requirements stipulated in this Law and its implementing regulations.”

This was amended by Article 109, paragraph 1 of the Job Creation Law to read:

“A Limited Liability Company, hereinafter referred to as a Company, is a legal entity that constitutes a capital partnership, established based on an agreement, conducting business activities with a capital base wholly divided into shares or an individual legal entity that meets the criteria for Micro and Small Enterprises as regulated in the legislation regarding Micro and Small Enterprises.”

When comparing these two definitions, the Limited Liability Company under the previous law is described as a legal entity in the form of a capital partnership or association established by two or more individuals with a capital base divided into shares. In contrast, the Job Creation Law defines a Limited Liability Company as a legal entity that can be established not only by an agreement requiring a minimum of two individuals but can also be established by a single individual who meets the criteria for Micro and Small Enterprises based on a declaration.

This change is further reinforced by Article 109, paragraph 2, which modifies Article 7 of the Limited Liability Company Law, stipulating that the requirement for a Limited Liability Company to be established by two or more individuals does not apply to companies meeting the criteria for Micro and Small Enterprises. Thus, the enactment of the Job Creation Law, which amends several provisions in the Limited Liability Company Law, represents the government’s effort to facilitate business operations, particularly for micro and small enterprises, by introducing a new legal entity: the Individual Limited Liability Company.

B. The Concept of Individual Limited Liability Company in Indonesia.

The changes to regulations regarding limited liability companies (LLCs) in Indonesia reflect the government's commitment to economic development by introducing a new legal entity concept: the Individual Limited Liability Company (ILLC). This initiative aims to encourage micro, small, and medium enterprises (MSMEs) to grow and compete effectively in the economy. MSMEs play a crucial role in Indonesia's economy, as many of their ventures are closely aligned with basic community needs.¹³

Historically, MSME operators have preferred sole proprietorship forms, such as Trading Companies (Perusahaan Dagang), over LLCs, which have characteristics of capital associations and limited liability. The primary challenges they face include issues related to capital, business partnerships, and the complex establishment requirements stipulated in the Limited Liability Company Law.¹⁴

According to a study by the World Bank, there are currently far more informal MSMEs compared to formal ones, with estimates ranging from 70 to 100 million formal MSMEs and 285 to 345 million informal MSMEs. The World Bank also noted that formal MSMEs tend to be more stable in their operations, gaining better access to funding, generating higher profits, and positively impacting state revenues through taxes. Thus, the government has amended several provisions in the limited liability company law to facilitate the establishment of LLCs, making it easier for MSME actors to develop their businesses.¹⁵

An Individual Limited Liability Company (ILLC) is an LLC where all shares can be controlled or owned by a single shareholder, both at the time of establishment and thereafter. According to Article 1, paragraph 1 of the UU PT, an ILLC is a business entity that meets the

¹³ Desak Putu Dewi Kasih. dkk, *Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal*, Arena Hukum, Volume 15, Nomor 1, April, 2022: 20-37

¹⁴ Rio Christiawan, *Hukum Bisnis Kontemporer*, PT. Rajagrafindo Persada, Depok, 2021, Hlm. 36

¹⁵ Wuri Sumampouw. dkk, *Perlindungan Hukum Terhadap Usaha Mikro Kecil Dan Menengah Pasca Berlakunya Undang-Undang Cipta Kerja*, Jurnal De Jure, Volume 13, Nomor 1, April, 2021: 24-39

criteria for MSMEs as regulated in relevant legislation. It is distinct from other entities or companies exempted from the requirement to be established by a minimum of two individuals, as outlined in Article 7 of the UU limited liability company law, such as state-owned enterprises and other specific entities.

The criteria for MSMEs as stated in Article 1, paragraph 1 of the limited liability company law are as follows: a. Micro enterprises with a business capital of up to Rp 1,000,000,000 (one billion rupiah), excluding land and buildings; b. Small enterprises with business capital exceeding Rp 1,000,000,000 (one billion rupiah) and up to Rp 5,000,000,000 (five billion rupiah), excluding land and buildings; c. Medium enterprises with business capital exceeding Rp 5,000,000,000 (five billion rupiah) and up to Rp 10,000,000,000 (ten billion rupiah), excluding land and buildings.

The establishment of an ILLC is based on a declaration made in Indonesian, detailing the purpose, business activities, capital structure, and other relevant information about the company. This declaration is registered electronically with the Minister, eliminating the need for a notary deed or formal approval from the Minister of Law and Human Rights, requiring only notification. Shareholders of an ILLC can only be individuals; legal entities cannot establish or hold shares in an ILLC. Additionally, a founder may only establish one ILLC within a one-year period.

Like other LLCs recognized as capital partnerships, an ILLC also has corporate organs consisting of a General Meeting of Shareholders, a board of directors, and a board of commissioners. The board of directors manages the company's operations for its interests, following the company's stated objectives. They are required to prepare financial statements to uphold good corporate governance, which must be reported to the Minister within six months after the end of the accounting period.

The introduction of the ILLC after the enactment of the Job Creation Law, allowing LLCs to be established by a single individual, does not deviate from the partnership principle outlined in Article 1618, which states:

“A partnership is an agreement in which two or more people bind themselves to contribute something to the partnership, with the intention of sharing the profits arising from it.”

The allowance for an LLC to be established by a single individual represents an expansion of the original concept of a capital partnership. Prior to the Job Creation Law, the possibility for a single shareholder to establish an LLC already existed in Article 7, paragraph 5 of the UU PT, which provided exemptions for state-owned enterprises and regional-owned enterprises that are wholly state-owned.

Should an ILLC's ownership change to include more than one shareholder or fail to meet the criteria established for MSMEs, it may be required to transition to a capital partnership. This change must first be formalized through a notary deed and registered electronically with the Minister. Consequently, once the characteristics of an ILLC change to those of a capital partnership due to an increase in capital from new shareholders or through the sale of shares from the sole owner to others, the ownership of the ILLC will no longer be limited to one individual.

The establishment of the new legal entity, the Individual Limited Liability Company, is anticipated to assist MSME actors in developing their businesses, including gaining access to banking finance. However, in practice, some MSME operators using the ILLC structure face challenges when applying for loans from banks. For instance, PT NFK, based in Bekasi, West Java, has encountered rejections from several banks in the area due to banks requiring a deed of incorporation as part of their loan application criteria, whereas the establishment of an ILLC is based on a declaration rather than a formal deed. This situation highlights the lack of outreach regarding the new legal products established by the government and their implications for banking, which plays a crucial role in financing business activities.

Conclusion

The limited liability company (LLC) following the enactment of the Job Creation Law has introduced a new legal entity: the Individual Limited Liability Company (ILLC). This change has shifted the paradigm of LLCs, which were previously understood as capital partnerships requiring at least two founders. Now, an LLC can also be

established by a single individual, provided it meets the criteria for micro, small, and medium enterprises (MSMEs), thereby constituting an ILLC.

The concept of the Individual Limited Liability Company in Indonesia allows a single founder to establish an LLC, expanding the definition of an LLC from being solely a capital partnership based on an agreement. However, the idea of forming an LLC by a single individual is not entirely new in Indonesia. Before the enactment of the Job Creation Law, the LLC law provided exceptions that allowed LLCs to be established by one individual for entities where all shares were owned by the state, state-owned enterprises, regional-owned enterprises, and others.

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