



Juridical review of individual companies and limited liability companies

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ARTICLE INFO

Article history:

Received 2022-09-03

Received in revised form
2022-10-25

Accepted 2022-12-01

Keywords:

Sole Proprietorship; Limited Liability Company; Establishment.

DOI:

<https://doi.org/10.26905/idjch.v13i3.6086>.

How to cite item:

Puranto, H. Y., (2022), Juridical review of companies and limited liability companies. *Jurnal Cakrawala Hukum*, 13(3)262-271. doi:10.26905/idjch.v13i3.6086.

Abstract

Limited Liability Companies are formed by at least 2 (two) founders, and their formation is based on an agreement. At the end of 2020, the government issued a law known as the Job Creation Law (after this, referred to as UUCK). UUCK was established to promote economic development and support the business environment in Indonesia. UUCK has a new form of business, individual ownership, by the nature of micro and small businesses. Sole proprietorships were established under the revised UUCK section of the Limited Liability Company Law Number 40 of 2007 (after this referred to as the UUPT), and the revised UUPT contains several provisions that can cause conflicts in the future, one of which is a merger. Greetings. However, regarding establishing an individual business entity that one person can incorporate, this provision does not fulfill the parts of the agreement mentioned in the sense of a corporation. One of the contract conditions is that it must be carried out by at least 2 (two) people. A single company with a new concept requires further research.

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1. Introduction

Limited Liability Companies are regulated in Law number 40 of 2007 concerning Limited Liability Companies, which regulates, starting from the establishment, the minimum amount of capital and various matters relating to Limited Liability Companies. A *limited Liability Company* is a business that is a capital association of shareholders who have limited responsibility for the issued and paid-up authorized capital. (Khairandy, 2013)

A limited Liability Company is a legal entity. Many business actors choose to form a Limited Liability Company, not only because of their status as a legal entity but also because of the many other benefits they will experience rather than just establishing a Trading Business or Commanditaire Venootschaap (CV).

In 2020, President Jokowi proposed a new concept regarding laws, namely laws with the concept of the Omnibus Law. This concept allows the Government to revise and replace several laws at once so that regulations are more straightforward and reduce budget and time. Regardless of the many responses and dynamics that have occurred, at the end of 2020, the Law with the concept of the Omnibus Law was passed under the name of the Job Creation Law (after this, referred to as the UUCK). UUCK consists of various sectors, one of which is regarding Limited Liability Companies.

According to the Government, the establishment of UUCK will facilitate the business climate in Indonesia so that it can increase national economic growth. A solid and robust business capable of enhancing the development of the national economy also provides a fundamental basis for the business world to face the global economic world and its dynamics, the era of the industrial revolution, and to be able to cope with advances in in-

formation technology. (Nurnaningsih, at all., 2020) The Government initiated the concept of UUCK in the Limited Liability Company sector to help people to be more prosperous by increasing income, encouraging people's purchasing power, and increasing productivity. The Government is carrying out this movement because if it is not carried out, employment will become more competitive, the number of unemployed people will increase, and Indonesia may be trapped as a middle-income country.

UUCK provides convenience for business actors, especially those still classified as Small and Medium Enterprises Criteria, through a new form of Company. This Company can be established by only one person, an Individual Company. Sometime after the UUCK was ratified, Government Regulation Number 8 of 2021 was issued concerning Company Authorized Capital and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises as implementing regulations for the Limited Liability Company sector.

A Limited Liability Company business entity is a business activity that is part of vital economic activities—considering that currently, business activities or community businesses cannot be separated from the existence of Limited Liability Companies ranging from micro to large class as a form of business that is widely used. This is because the form of business entity law in the form of a Limited Liability Company has limited liability. (Agastya, 2018)

Individual companies established by Indonesian Citizens by filling out a Statement of Establishment in Indonesian. The concept of an individual company is different from a limited liability company in general, where establishment can be done by filling out a statement of establishment,

no longer using an authentic deed as stated in Law Number 40 concerning Limited Liability Companies. If observed, the concept of an individual company will raise many questions, one of which is with an establishment that can be carried out by only one person, whether the elements of the agreement in the definition of a company are fulfilled so that it can be concluded that an individual company is a legal entity established based on an agreement.

R Ali Rido explained in the general doctrine of legal entities that to fulfill the requirements of a legal entity as a legal subject, namely fulfilling the requirements, namely the existence of separate assets, having specific goals, having self-interest, and having good organization. (Santosa, 2019)

The procedure for establishing a company must also be straightforward because it concerns business continuity and will later be related to the extent of the responsibilities of individual company shareholders. The government created an individual company to stimulate economic growth in Indonesia; things that are still unclear and gray must be straightened out so that an individual company can have a positive impact. Further studies must be carried out regarding the concept of an individual company so that in the future, there will be no conflict between the norms of Law number 40 of 2007 concerning Limited Liability Companies (from now on referred to as UUPT) and UUCK because after all, UUCK does not change the entire contents of UUPT, so that in practice individual companies that not regulated in UUCK subject to UUPT.

2. Methods

This study analyzes the juridical study of Limited Liability Companies and Individual Com-

panies using the normative legal research method/ doctrinal Legal Research, which examines the quality of the legal norms (in this case, the Law) itself.

3. Result and Discussion

In terms of terminology, a Limited Liability Company consists of the words "company" and "limited." The meaning of the word Company is a trade union, and Sero refers to capital which means shares. The word "limited" refers to the responsibility of shareholders, which is limited to the nominal value of the shares they own. (Ahmad and Gunawan, 2006)

The definition of a Limited Liability Company, from now on referred to as a Limited Liability Company, is listed in the UUPT. Namely, a legal entity that is a partnership of capital established based on an agreement, conducting business activities with an authorized capital entirely divided into shares and fulfilling the requirements stipulated in this law and its implementing regulations. Limited Liability Companies are pretty widely used in Indonesia and more popular than other forms of business; there are several things behind the popularity of the selection of Limited Liability Companies as a form of business in society, namely: Capital / Shares, wealth that is separate from the wealth of its participants, shareholders have responsibilities which is limited, there is a separation of functions between shareholders and management or directors, there is a commissioner who functions as a supervisor, and there is a General Meeting of Shareholders as the highest authority in a Company. (Sinaga, 2018)

The Limited Liability Company Law in Indonesia has been amended several times. (John, 2014), Moreover, the last amendment before UUCK, Limited Liability Companies are regulated in Law Number 40 of 2007 concerning Limited

Liability Companies. Changes related to companies in the form of legal entities are aimed at maintaining global economic investment and business convenience. A Limited Liability Company needs to pay attention to the legal consequences of the Company and the responsibilities attached to the Company. (Listyowati, 2015)

There are several main elements of the Company as a Legal Entity, namely: (1) Is a Capital Partnership, (2) Established Based on an Agreement, (3) Conducting Business Activities, (4) The Birth of a Company Through a Legal Process in the Form of Government Approval. (Harahap, 2016)

1) Is a Capital Partnership. The Company as a legal entity has "authorized capital," also called authorized capital, the amount of capital stated or stated in the Company's Deed of Establishment or AD. (Syahrul, 2000) The shareholders enter authorized capital divided into shares or holdings into the Company. So there are several members of the Company as shareholders in partnership to pay shares to the Company. The partnership referred to here is the capital partnership and the member partnership. However, the capital partnership is more prominent than the member partnership, as stipulated in the Civil Code. 2) Established Under Agreement. The Company, as a legal entity, was established based on an agreement; this means that in its establishment, it must fulfill the elements in the contract law stipulated in the third book of the Civil Code. The Company's establishment is "contractual" and "consensual," The Company was born because previously, an agreement was entered into. 3) Conducting Business Activities. A company must have the aims and objectives listed in the Company's Articles of Association, and the Company's business activities must be carried out to achieve the goals and objectives of the Company by the mandate of Article

2 UUPT. 4) Birth of the Company Through a Legal Process in the Form of Government Approval. The birth of the Company as a legal entity because it was created or realized through a legal process by statutory provisions. That is why if the requirements are not met, the Company cannot obtain approval, in this case, from the Minister of Law and Human Rights. The process of the birth of a company is emphasized in Article 7 UUPT, which reads: "Companies obtain legal entity status on the issuance date of the Ministerial Decree regarding ratification of company legal entities."

The establishment of a Persero is regulated in the amendment to Article 7 paragraph (7) of the Limited Liability Company Law, which allows the establishment of a Limited Liability Company with 1 (one) person. In Indonesia, it is even more possible to change an Individual Limited Liability Company to an ordinary PT as stated in Article 9 of Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses (from now on referred to as PP 8 of 2021) that 1 "Individual companies must change their legal entity status to become a Company if the shareholder becomes more than 1 (one) person; and does not meet the criteria for micro and small businesses as stipulated in the provisions of laws and regulations regarding micro and small businesses² Individual companies prior to becoming a company as referred to in paragraph (1) change their status through a notary deed and register electronically with the Minister. The change in status, as referred to in paragraph (2), is carried out by the statutory provisions regarding the Company "Referring to these provisions, after a change in the characteristics of an Individual Company to become a pure Limited Liability Company there is additional capital from

new shareholders which is then followed by the issuance of shares or transfer of shares Individual Company from the sole founder to other shareholders based on the agreement mechanism, in which the shares of the Individual Company are not only owned by one more person. Bias is when the organ of an Individual Company is only one person, namely the Shareholder and the Directors and Commissioners.

Specifically, in the aspect of establishing an Individual Company, it does not deviate. It remains based on the concept of capital association, only differing in its establishment by 1 (one) person with the possibility of a change in status to become a Company as stipulated in Article 9 PP 8 of 2021. In short, to establish a Company Limited, according to UUPT 40 of 2007, several stages must be passed. (Eddhie and Sessions, 2020), Including

- a. Making the Deed of Establishment of the Company. A Notary draws up the Deed of Establishment of the Company. Founders (in this case can be individuals or legal entities), as referred to in Article 7 paragraph (1) UUPT, are required to use a Notary Deed to establish a Limited Liability Company, with the threat, if the establishment does not use a Notary Deed, then the Company is invalid, and cannot obtain approval from the Minister of Justice, and cannot obtain status as a legal entity. The UUPT requires that a company is a legal entity established based on an agreement, then explicitly stated in a Notarial deed, wherein the deed of establishment and the articles of association of the Company concerned are also included.
- b. Approval from the Minister of Justice. The deed of establishment that a Notary has made will be sent to Jakarta in order to obtain approval from the Minister of Justice in order to obtain legal entity status. According to Article 7 paragraph (4) UUPT, the status of a new legal entity will be obtained by the Company when there is

approval from the Minister. Rejected or received the application for company authorization, the Minister will equally give notification; the period from application to approval takes approximately 60 (sixty) days after receiving the application for company authorization. If the application is rejected, the Minister will give a notification along with the reasons for the rejection of the application in question.

- c. Registration. The deed of establishment, which contains the complete articles of association of the company, along with the approval letter from the Minister of Justice, is then registered in the company register by the provisions of Law number 3 of 1982 concerning Compulsory Company Registration.
- d. Announcement. The Company as a legal entity was established with a Deed of Establishment in which the Company's Articles of Association were stated. A limited Liability Company (PT) is an association of shareholders (or, if possible, by specific laws in a country, shareholders can consist of one person) created by law and treated by the court as a pseudo-human. Limited Liability Companies have separate assets from their shareholders, can take action or legal relations in terms of assets, and can deal with courts. In UUPT, PT is established based on an agreement, in line with the founders consisting of 2 (two) people by the terms of the agreement.

Suppose an established company does not have a minimum of 2 (two) founders. In that case, several consequences may occur, including the shareholder being personally responsible for all engagements and losses of the Company, or at the request of an interested party, the district court may dissolve the Company.

Regarding the limited liability of the company, there is a potential for abuse that the owner of the company may commit; to protect creditors, the UUPT provides several exceptions to limited

liability, as stipulated in Article 3 paragraph (1) with certain exceptions that the liability of shareholders is limited. It can be dispensed with. (Yani, at all., 2006)

Limited Liability Companies have quite exciting differences from other businesses, including a. Being the company's owner does not mean always being the company's manager. We often find in companies that the manager or person who runs the company is a professional hired to manage the company and has absolutely no ownership. b. There is limited liability for the debt, only limited to the shares' value. c. Company assets and personal assets do not merge into one. d. Share certificates are a sign of ownership of a Limited Liability Company. These share certificates are purchased directly from the Company (for closed limited liability companies) and purchased through the capital market (for open limited liability companies), and these share certificates can be traded.

Several countries already know this individual company by the term Single-Member Private Limited Liability Company in the EU and UK; in Malaysia, it is known as *Selfan Berhad* (*Sdn Bhd*), and Singapore uses the term *Private Limited Company* (*Pte Ltd*). Behui Mao stated that SMC is a limited liability company with one shareholder, an individual (natural person), or a legal entity (legal person). (Mao, 2012)

Omnibus Law is a concept in which a law product can revise part of the law without repealing it and can be carried out across sectors. One of the revised laws is the 2007 UUPT, so if you pay attention, in UUCK, the phrase used is "several provisions in Law Number 40 of 2007 concerning Limited Liability Companies (State Gazette of the Republic of Indonesia of 2007 number 40, Supplement to the State Gazette of the Republic of Indonesia number 4756) was amended as follows: "It

can be understood that UUPT is still partially valid, and UUCK's position is as *lex specialis* from UUPT. Provisions in the Company Law that have been amended include establishing a company when obtaining legal entity status, provisions regarding authorized capital, and several additions regarding the concept of an individual company.

Unlike the Company Concept that we knew before, in the Job Creation Law (after this referred to as UUCK), the Limited Liability Company cluster has a new form of company, namely an Individual Company. It is called an Individual Company because the establishment of an Individual Company can be carried out by only one person, as stated in Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that meet the Criteria for Micro and Small Enterprises Article 2 paragraph (1) letter b. This individual company is unique. Namely, a company that is included in the criteria for Micro and Medium Enterprises, as stated in Article 6 of Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, namely: (1) The criteria for Micro Enterprises are as follows: a. Have a maximum net worth of Rp. 50,000,000.00 (fifty million rupiahs) excluding land and buildings for business premises; or b. Have annual sales results of a maximum of IDR 300,000,000.00 (three hundred million rupiahs); (2) The criteria for small businesses are as follows: a. Have a net worth of more than IDR 50,000,000.00 (fifty million rupiahs) up to a maximum of IDR 500,000,000.00 (five hundred million rupiahs) excluding land and buildings for business premises; or b. Have annual sales proceeds of more than IDR 300,000,000.00 (three hundred million rupiahs) up to a maximum of IDR 2,500,000,000.00 (two billion five hundred million rupiahs) (3) The criteria for Medium Enterprises are as follows: a. Have a net

worth of more than IDR 500,000,000.00 (five hundred million rupiahs) up to a maximum of IDR 10,000,000,000.00 (ten billion rupiahs) excluding land and buildings for business premises; or b. Have annual sales proceeds of more than IDR 2,500,000,000.00 (two billion five hundred million rupiahs) up to a maximum of IDR 50,000,000,000.00 (fifty billion rupiahs).

According to the definition provided by UUCK, the criteria for Medium Enterprises are not included in Individual Companies. Provisions regarding Individual Companies are regulated in the UUCK Limited Liability Company cluster in Articles 153A-153J. Some of the provisions of the Company Law that have been amended include establishment, which can be carried out by one person, ratification of an individual company to become a legal entity is no longer through the approval of the Minister but can be through electronic registration evidence; an individual company also does not require an authentic deed in its establishment, it is enough to fill out a statement form provided electronically. It is so easy to establish an individual company; of course, it has positive and negative impacts.

The individual company consists of one shareholder, but this does not mean that the responsibility includes personal assets because, as stated in article 153J, the shareholders for the Company for Micro and Small Enterprises are not personally responsible for the engagement made on behalf of the Company and is not responsible for more than the shares owned.

An Individual Company is established by filling out a Statement of Establishment in Indonesian, as stated in Article 6 paragraph (1) of Government Regulation 8 of 2021 concerning Company Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Busi-

nesses. The intended Statement of Establishment is registered and filled in electronically. The establishment of an individual company does not require an authentic deed as the basis and the birth of a company as a legal entity after being registered and obtaining an electronic registration certificate. The birth of an Individual Company immediately begins with approval from the Minister. The capital required by an Individual Company in its establishment is not written down, the minimum amount is precise, and the Company's authorized capital for an Individual Company comes from the separate wealth of the founders, as explained in the Elucidation of Article 153B (paragraph 1) UUCK Limited Liability Company sector. The Company's shareholders are individuals capable of taking legal action and are competent, as stipulated in the Civil Code.

Some jurists have different views regarding contracts and agreements, but some argue that the terms of agreement and contract are the same. The subject believes the term contract can only be used for a written agreement or agreement, and an agreement made orally is referred to as an agreement or agreement. Ida Bagus Wyasa Putra believes that agreement and contract are the same terms. Wyasa emphasized that the term contract is an absorption term absorbed from an English contract, which is a term that refers to an agreement, written or unwritten (oral agreement), made by two or more people to regulate the bond and material of the commercial agreement. Among them. (Son, 2017)

M. Yahya Harahap said, "Agreement or verbintenis contains the meaning: a legal relationship of wealth/property between two or more people which gives strength to one party's rights to obtain achievements and at the same time obliges the other party to fulfill achievements." (Harahap, 1986) The Big Indonesian Dictionary

(from now on referred to as KBBI) provides the understanding that an agreement is an agreement (written or verbal) made by two or more parties, each agreeing to obey what is stated in the agreement.

Based on the definition of the agreement described above, it can be concluded that an agreement is a legal relationship that arises after two or more people mutually agree to give and receive something and that something is an achievement.

The legal relationship that is common in society is based on an agreement. Understanding the agreement can be understood as a situation where a person promises to another person and vice versa to do something. Seeing this understanding, it can be concluded that in an agreement, there must be at least 2 (two) people who bind themselves to each other so that rights and obligations can arise. The agreement describes a series of words that contain elements of a promise involving two parties. The relationship between two people who promise each other can be called an engagement. (Syaifuddin, 2016) The elements in the agreement are 1. The legal relationship is in the form of an agreement; 2. Legal relations regarding property; 3. Between 2 people/parties or more; 4. One person/party can receive achievements (the creditor). The other party is the party that is obliged to carry out the achievement.

Recognizing the elements in the agreement is essential because it is used to identify whether we are dealing with an agreement. (Budiono, 2014) In Herlien Budiono's opinion, the agreement elements are a. agreement from two or more parties. Agreements can only arise if both parties agree and work together. The party element referred to here is the subject of the agreement; at least two legally competent people are required to agree. b. The word reached must depend on the parties.

An agreement is reached when the other party approves the offer from one party. c. The desire or purpose of the parties for the emergence of legal consequences. Promises that occur in everyday life do not necessarily lead to legal consequences. Two or more people whom promise may not necessarily have legal consequences if the parties do not wish for legal consequences to arise. d. Legal consequences for the interests of parties. The legal consequences that arise only bind the parties who bind themselves and cannot bind third parties because this agreement does not harm third parties. e. Made with due observance of statutory provisions. The format and form of the agreement are, in principle, determined freely by the parties, but some agreements are required to be in a particular form determined by law. Some agreements that are required by law to be made in the form of deeds are: Grants (Articles 1682 and 1687 of the Civil Code), Separation of inheritance (Article 1071 in conjunction with Articles 1072 and 1074 of the Civil Code), Marriage Agreement (Article 29 of Law Number 1 of 1974 concerning Marriage in conjunction with Article 147 of the Civil Code); Fiduciary Guarantee (Article 1 paragraph (1) of Law Number 42 of 1999 concerning Fiduciary Guarantees); Power of Attorney for Imposing Mortgage Rights (Article 15 paragraph (1) of Law Number 4 of 1996 concerning Mortgage Rights on Land and Land-Related Buildings); Foundation Establishment (Article 9 paragraph (2) of Law Number 16 of 2001 Concerning Foundations). Before the UUCK was passed, it established a limited liability company using a notarial deed. However, after the UUPT was revised, a limited liability company that met the criteria for Micro and Small Enterprises could be established with a unilateral statement from the company's founder. Agreements can be made in oral or written form. Agreements formed in written form have advan-

tages over agreements made orally. Disputes that later arise between the parties who promise the evidence used is an agreement in written form.

The establishment of an Individual Company is linked to the Terms of the Agreement. Individual companies are regulated explicitly in Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that meet the Criteria for Micro and Small Enterprises; Article 1 is stated regarding Limited Liability Companies, which are defined as legal entities which are capital partnerships, and established by agreement. When referring to the terms of the agreement, the conditions that must be met are the involvement of 2 (two) or more people. The establishment of an Individual Company is aimed at Micro and Small business actors. Micro and Small Business Actors who wish to establish a company do not need other people in the process of establishing their Company; in other words, an Individual Company can be established with only 1 (one) person. Provisions regarding the Establishment of an Individual Company can be seen in Article 153A paragraph (1) UUCK Limited Liability Company sector, that a Company that meets the Micro and Small Business Criteria can be founded by 1 (one) person.

The terms of the agreement are divided into 2, namely subjective terms and objective terms, and each has its legal consequences. Failure to fulfill objective conditions can result in the agreement being null and void, and if subjective conditions are not met, it can result in the agreement being canceled. In the individual company, with only one person established, the subjective conditions are not met, so according to theory, the agreement can be canceled. However, if you look deeper, the agreement cannot be made with only 1 (one) person because one person is binding you to your-

self. This, of course, becomes very difficult because no other parties are involved, so it does not give rise to rights and obligations. One person is responsible for himself and carries out his rights and obligations; of course, this is not the result of an agreement between 2 parties as it should be.

The Job Creation Law uses the Omnibus Law, which can basically revise several laws simultaneously to save time and costs. Thus UUCK is the newest rule, especially in this case relating to the UUPT. UUCK is a *lex specialis* of UUPT because UUCK regulates individual companies. In contrast, UUPT regulates limited companies in general, so what is used as a guide for everything related to individual companies is the provisions in UUCK. Exceptions in the revision of the Limited Liability Company Law in the UUCK are found in article 7, where that article it is stated regarding the exception for the establishment of a Limited Liability Company, that a company that meets the criteria for Micro and Small Enterprises can be established with only one person.

4. Conclusion

The Limited Liability Company is a legal entity of great interest to Indonesian entrepreneurs. A limited liability company has several advantages, such as the separation of personal assets, clear legality, and limitations on liability. UUCK regulates the form of a new business entity, namely single ownership, which can be established by one person and must meet the criteria for micro and small businesses. An operation consisting of more than one person does not fulfill the contract requirements, which require at least 2 (two) people to enter into a contract. UUCK is a *lex specialis* of UUPT, so everything related to individual companies must be by the Job Creation Law and its derivatives.

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