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Individual company of micro small medium business (MSME's) in the study of law number 11 of 2020

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Abstract
Research with the title individual company small and medium micro enterprises (MSMEs) in the study of law number 11 of 2020, raises issues including how to organize individual companies specifically for micro, small and medium enterprises without a complete limited liability company organ and what are the accountability and accountability of special individual companies Micro, Small and Medium Enterprises towards third parties. Relying on normative juridical research methods there are various approaches. The writing of this research uses a statute approach, a conceptual approach, and a comparative study approach. The results obtained in this study are as follows: The implementation of individual companies, especially MSMEs that have incomplete company organs, is regulated through the Ciptaker Law and PP number 8 of 2021 after the researchers examined it, it turned out that these regulations conflict with the Company Law and the Ciptaker Law itself. In the opinion of researchers, if the Indonesian government wants to make more comprehensive arrangements regarding individual companies so that they do not collide with the preference principle. The arrangements regarding liability of limited liability companies from the Criminal Code to the Ciptaker Law have not changed much, lawmakers always make regulations that protect the position of limited liability companies as long as the organs in the limited liability company do not make mistakes/do not violate the authority obtained from the company's articles of association and statutory regulations. -applicable invitations. With the enactment of the Ciptaker Law, which broadens the definition of a Limited Liability Company with the existence of an Individual Company, according to researchers, the existence of an Individual Company whose shares are only owned by one person makes the Individual Company not have a good system of checks and balances so that it has the potential to harm third parties.

Keywords: individual company, MSME, job creation

Introduction

In 2020 the Government together with the People's Representative Council passed Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law or Ciptaker). This law is very popular in society because it is in the form of an omnibus lawwhich in the law regulates many things and one of the most important things is increasing employment and ease of doing business. President Joko Widodo revealed the main purpose of passing the Job Creation Law. He revealed that the main goal 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. "Overlapping regulations and complicated procedures were cut, bureaucratic licensing chains which are convoluted with cutting, as well as illegal levies that have hampered business and investment are also eradicated while still prioritizing our commitment to protecting the environment an environmentally friendly commitment [1] "he said.

[1]Mitha Paradila Riyadi,"Ungkap Tujuan Utama Dibuatnya UU CiptaKerja, Jokowi: SyaratInvestasijadi Sederhana", www.pikiran-rakyat.com, diakses pada tanggal 18 Januari 2023

Efforts to change regulations relating to facilitation, protection and empowerment of cooperatives and MSMEs, enhancing the investment ecosystem, and accelerating national strategic projects, including increasing the protection and welfare of workers are carried out through changes to sector laws that do not yet support the realization of synchronization in guaranteeing the acceleration of job creation, so that legal breakthroughs are needed that can resolve various problems in several laws into one law in a comprehensive manner.

Meanwhile, the purpose of establishing the Job Creation Law is to: [2]

1. Creating and increasing employment by providing convenience, protection and empowerment to cooperatives and MSMEs as well as national industry and trade as an effort to be able to absorb the widest possible Indonesian workforce while still paying attention to balance and progress between regions in the unity of the national economy.
2. Ensure that every citizen gets a job, and receives fair and proper compensation and treatment in a work relationship.
3. Make adjustments to various regulatory aspects related to alignment, strengthening and protection for cooperatives and MSMEs as well as the national industry.
4. Make adjustments to various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented to 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 underwent an expansion after the promulgation of the Job Creation Law, one of the clusters of which changed and added provisions to Law Number 40 of 2007 (hereinafter referred to as the Company Law). It is hoped that the Job Creation Law will be able to absorb labor, create new jobs, and increase domestic and foreign investment in Indonesia through streamlining regulations in several fields that have so far hampered national economic development including several provisions in the Company Law.

Compiled using the omnibus law technique, the Job Creation Law is a breakthrough for the government in overcoming the hyperregulation that has occurred, this is because several policies have been taken previously such as tightening regulatory proposals which have triggered many problems. In April 2021 the implementing regulations for the Job Creation Law were promulgated through Government Regulations and Presidential Regulations which have further added to the government's optimism to advance the national economy. This is in line with how important it is to reform Indonesia's positive law as an accelerator of national economic development, one of which is by re-regulating regulations in the field of company law. One of them is by amending several regulations related to Limited Liability Companies which are regulated in the Company Law. Limited Liability Company is a form of business that is part of people's lives today, so it can be said that the presence of the limited liability company business entity concept is a means of business activity which is part of vital economic activities. Considering that currently the community'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 legal form of business in the form of a Limited Liability Company has limited liability. One of the elements of a legal entity is the existence of separate patrimony between the personal assets of the shareholders and the assets of the legal entity. Apart from the separation of assets, legal entities also have a characteristic, namely the association of capital from shareholders who are only responsible for the capital placed in the legal entity (limited liability).In short, shareholders are only liable to the extent of the shares they own. This is what makes a Limited Liability Company different from other forms of business entities that do not have the status of a legal entity.

Problems arise when there are significant changes in the Company Law through the Job Creation Law. One of them, with the introduction of a new concept in Indonesian company law, namely the existence of an Individual Legal Entity in the form of an Individual Company which is specifically for MSME actors. The purpose of establishing a Limited Liability Company.

Individuals for MSME actors to facilitate business development for MSME actors by being able to form a business entity with the legal status of a Limited Liability Company. For this reason, the government made changes to several provisions in the Limited Liability Company Law to accommodate support for MSME actors to do business through the form of a Limited Liability Company legal entity. This is stated in Article 109 point 1 of the Job Creation Law which amends the provisions of Article 1 point 1 of the Limited Liability Company Law regarding the definition of a Limited Liability Company which initially stipulates that: "Limited Liability Company is a legal entity which is an association of capital, established based on an agreement, conducting business activities with basic capital all of which are divided into shares and meet the requirements stipulated in this law and its implementing regulations."

Becoming a "Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a partnership of capital, established based on an agreement, conducting business activities with an authorized capital which is entirely divided into shares or individual Legal Entities that meet the criteria for Micro and Small Enterprises as regulated in laws and regulations invitation regarding Micro and Small Enterprises."

You can compare the meaning of a Limited Liability Company in the PT Law and the CiptaKarya Law, that in the PT Law the meaning 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. Whereas 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, 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 UMK criteria. It provides convenience to form a Limited Liability Company with only 1 (one) person, as stated in Article 109 point 2 of the Omnibus law on the Job Creation Law which changes the provisions of Article 7 of the Limited Liability Company Law

[2]David Wahyudi, "Tujuan Dibentuknya Undang-Undang Cipta Kerja", www.tribratanews.bengkulu.polro.go.id,diakses pada tanggal 15 Januari 2023

to become: "(7) Provisions requiring a company to be founded by 2 (two) or more people as referred to in paragraph (1), paragraph (5), and paragraph (6) does not apply to:
a) Persero whose shares are wholly owned by the state;
b) Regional Owned Enterprises;
c) Village Owned Enterprises;
d) Companies that manage stock exchanges, clearing and guarantee institutions, depository 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."
The establishment of a Limited Liability Company with a single founder basically results in the non-fulfillment of 2 (two) elements in the basic concept of a Limited Liability Company, namely the existence of an element of 'partnership' in the principle of capital partnership and the element of 'agreement' 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 the amendment to the Company Law through the Job Creation Law which provides space for establishing a Limited Liability Company only by 1 (one) person or single founder.
This is considered to be able to change the basic concept of a Limited Liability Company which is now a business with institutional associations. Based on the elaboration of this background, it is deemed important to re-discuss the concept of establishing an Individual Company for MSE actors as regulated in the Job Creation Law which is seen as not in line with the general theories, concepts and doctrines of legal entities and Limited Liability Company law that have been in effect so far in Indonesia. The formulation of the problems raised in this study are: 1. How is the Implementation of an Individual Company specifically for Micro, Small and Medium Enterprises without a Complete Limited Liability Company Organ. 2. What is the accountability of individual companies specifically for Micro, Small and Medium Enterprises to third parties.

Theoretical study

Liability

According to Peter Mahmud Marzuki responsibility in the sense of liability is defined as accountability which is a translation of liability/aanspralijheid, a specific form of responsibility. According to him, the notion of liability refers to the position of a person or legal entity who is deemed to have to pay some form of compensation or compensation after a legal event or legal action [3]. For example, a person must pay compensation to another person or legal entity because he has committed an unlawful act (onrechtmatige daad) which causes loss to that other person or legal entity. The term liability is within the scope of private law.
J.H. Niewenhuis argues that accountability is an obligation to bear compensation as a result of violating norms [4]. Acts violating these norms can occur due to: (1) unlawful acts, or (2) default. Nieuwenhuis further explained that accountability rests on two pillars, namely violation of law and error.
Referring to Niewenhuis's opinion, one understanding can be drawn that liability can occur because:
1. Laws; it means that a certain person/party is held liable not because of the mistakes he made, but he is liable because of the provisions of the law. This kind of liability is called risk liability.
2. Errors that occur due to an agreement between the parties that harm one of the parties as stipulated in Article 1365 of the Civil Code (an unlawful act). This kind of liability is known as liability based on the element of guilt and in its development it is also due to the fact that evidence becomes liability on the basis of presumption of guilt.

Legal entity

Teori-teorimengenai badan hukum secara umum terdapat 5 (lima) yaitu: [5]

(1) Theory of Fiction

This theory was pioneered by Friedrich Carl von Savigny (1779-1861). This theory is adopted in several countries, including in the Netherlands adopted by Opzomer, Diephuis, Land and Houwing and Langemeyer.
According to this theory, legal entities are solely made by the state. A legal entity is just a fiction, that is something that doesn't really exist, but people who animate it in the shadow as legal subjects who can perform legal actions like humans. In other words, in fact according to nature only humans as legal subjects, but people create in their imagination, legal entities as legal subjects are calculated the same as humans. So, people behave as if there are other legal subjects, but that unreal being cannot perform actions, so that it is humans who do it as their representatives. So that a legal entity, if it is going to act, must be mediated by its representative, namely its equipment, for example: a director or management in a limited liability company or corporation.

(2) Purposeful Wealth Theory

According to this theory, only humans can become legal subjects. But there is wealth (vermogen) which is not a person's wealth, but the wealth is tied to a specific purpose. Wealth that does not have and is bound to a specific purpose is what is called a legal entity. Wealth of a legal entity is seen as independent of those who hold it (onpersoonlijk/subject loos). What is important here is not who the legal entity is, but that the assets are managed with a specific purpose. Therefore, according to this theory, it doesn't matter if a person is human or not, and whether wealth is a normal right or not, the main purpose of this wealth is the goal.
The existence of a legal entity is given a position like a person because this body has rights and obligations, namely the right to assets and with it fulfills obligations to third parties. Therefore, the agency has rights/obligations and thus becomes a legal subject (subjectum juris). The wealth owned usually comes from a person's wealth which is separated or separated from the wealth of the person concerned and submitted to the agency, for example; Foundations, State-Owned Enterprises (BUMN), Regional-Owned Enterprises

[3]Paulus Aluk Fajar Dwi Santo, "MempertanyakanKonsepsiTanggungGugat" www.business-law.binus.ac.id, diakses pada tanggal 5 Januari 2023
[4]Ibid
[5]Chidir Ali, Badan Hukum, Penerbit Alumni, Bandung, 1991 hlm 31-37; Ali Rido, Badan Hukum Dan Kedudukan Badan HukumPerseroan, Perkumpulan, Koperasi, Yayasan, Wakaf, Alumni, Bandung, 2004, hlm 7-10; RiduanSyahrani,SelukBeluk dan asas-asashokumperdata, penerbit alumni, Bandung, 1992, hlm. 55-57; SalimHS, Pengantar Hukum PerdataTertulis, Cetakankeenam, SinarGrafika, Jakarta, 2009hlm. 29-31; TitikTriwulanTutik, Hukum Perdatadalam system hukum Nasional, hlm. 48-50.

(BUMD), and so on.

(3) Organ Theory

This theory was put forward by the German scholar, Otto von Gierke (1841-1921), a follower of the historical school and in the Netherlands embraced by L.G. Polano. His teaching is called leer dervolledigerealiteit the teaching of perfect reality. According to this theory, a legal entity is like a human being, a true embodiment in legal association, namely: 'eineleiblichgeistige Lebenseinheit'. The legal entity becomes a 'verbandpersoblichkeit', namely an entity that forms its will by means of the organs or organs of the body, for example its members or administrators are like humans who express their will through the mediation of their mouth or by means of their hands if the will is written above paper. What they (the organens) decide is the will of the legal entity.

Legal entities are not abstract (fictional) and are not property (rights) that are not subject. But a legal entity is a real organism, which is truly incarnated in legal association, which can form its own will by means of the tools at its disposal (administrators, members), like ordinary humans who have organs (five senses) and etc.

Thus, according to organ theory, a legal entity is not an abstract thing, but actually exists. A legal entity is not an objectless property (right), but a legal entity is a real organism that lives and works like an ordinary human being. The purpose of a legal entity is to become a collectivity, apart from individuals, it is a 'personlichkeitpersonlichkeit who has Gesamwille'. The functioning of a legal entity is equated with the function of a human being. So a legal entity is no different from a human being, it can be concluded that every association/association of people is a legal entity.

(4) Theory of Shared Wealth (Propriete Collective Theory)

This theory was put forward by Rudolf von Jhering (1818-1892), a German scholar who followed the school of history but left. Followers of this theory are Marcel Pleniol (France) and Molengraaff (Netherlands), followed by Star Busmann, Kranenburg, Paul Scolten and Apeldoorn.

According to this theory, the rights and obligations of a legal entity are essentially the rights and obligations of the members together. The assets of a legal entity are jointly owned (eigendom) by all its members. The people who come together form a unit and form a person which is called a legal entity. Therefore a legal entity is only a juridical construction. In essence, a legal entity is something abstract.

This joint wealth theory argues that those who can be the subjects of legal entity rights are:

a. The real people behind it;
b. Members of legal entities; and
c. Those who benefit from a foundation.

(5) Theory of Juridical Reality

This theory was put forward by the Dutch scholar E.M. Meijers and embraced by Paul Scholten, and is already a de heersende leer. According to Meijers, a legal entity is a reality, concrete, real, although it cannot be touched, it is not an illusion, but a juridical reality. Meijers calls this theory the theory of simple reality (eenvoudigerealiteit), because it emphasizes that in equating legal entities with humans it is limited to the field of law. So according to the theory of juridical reality, a legal entity is a real entity, as real as humans.

In other words, according to this theory, legal entities are equated with humans, which is a juridical reality, namely a fact created by law. So the legal entity exists because it is determined by such a law. For example, a cooperative is a group that is given the status of a legal entity after fulfilling certain requirements, but a Firma is not a legal entity, because Indonesian law stipulates so (vide Article 18 of the Commercial Code).

Limited Liability Company

According to article 1 number 1 of the PT Law, PT is a Limited Liability Company, hereinafter referred to as a company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with an authorized capital which is entirely divided into shares and fulfills the requirements stipulated in the law and its implementing regulations.

Capital partnership is an essential characteristic of the establishment of a PT. The capital put in does not have to be in the form of an amount of money, it can also be in the form of objects in other forms, but everything must be valued in a certain amount of money, at least the founders agreed to be valued in a certain amount of money [6].

The establishment of the company is consensual because the new company is considered to have been born after an agreement was made, so you can say that the establishment of the company is the result of the agreement. [7]

Fiduciary Dutties

Fiduciary duty by Black's Law Dictionary interpreted asa duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as duty that one partner owes to another). [8]

Individual Company

Article 109 point 1 of the Job Creation Law stipulates that: A Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a partnership of capital, established based on an agreement, conducting business activities with an authorized capital which is entirely divided into shares or individual Legal Entities that meet the criteria Micro and Small Enterprises as regulated in the legislation regarding Micro and Small Enterprises. Prior to the promulgation of the Job Creation Law, in fact its existence had been acknowledged even though within a certain period of time this was regulated in article 7 paragraph (5) of the Company Law which reads: [9]

Article 7

1. The company was founded by 2 (two) people or more with a notarial deed drawn up in the Indonesian language.
2. Every founder of the Company is obliged to take part in shares at the time the Company was established.
3. Provisions as referred to in paragraph (2) do not apply in

[6]J. Satrio, 2019, Perseroan Terbatas (yang tertutup) berdasarakan UU No. 40 tahun 2007, Rajawali Press, Jakarta, h.31, 35

[7]M. Yahya Harahap, 2009, Hukum Perseroan Terbatas, PenerbitSinarGrafika, Jakarta, h. 34

[8]Kenny Obriga Jeremia N.A.M, "Fiduciary Duties Direksi dan Dewan Komisaris PT", www.hukumonline.com ,diakses pada tanggal 19 Januari 2023

[9]RudhiPrasetya, 2011, Perseroan TerbatasTeori&Praktik, SinarGrafika, Jakarta, h. 96

the context of Consolidation.

4. The company obtains the status of a legal entity on the issuance date of the ministerial decree regarding the ratification of the legal entity of the company.
5. After the Company obtains the status of a legal entity and the shareholders become less than 2 (two) people, within a maximum period of 6 (six) months from the said condition, the relevant shareholder must transfer part of his shares to another person or the Company issues new shares to others.
6. In the event that the period referred to in paragraph (5) has exceeded, the number of permanent shareholders is less than 2 (two) people, the shareholder is personally responsible for all engagements and losses of the Company, and at the request of an interested party, the district court may dissolve the Company.
7. The provisions requiring the establishment of 2 (two) or more people as referred to in paragraph (1), and the provisions in paragraph (5) and paragraph (6) do not apply to: a. Persero whose shares are wholly owned by the state; or b. Companies that manage stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions as stipulated in the law concerning Capital Markets.

Regarding liability issues, the Job Creation Law answered by inserting Article 153J paragraph (1) which states that the Company's shareholders for MSMEs do not have personal liability for engagements carried out on behalf of the Company and have no liability for the Company's losses in excess of their shares. Limited liability of the company's shareholders is a characteristic of a limited liability company, but sometimes the limited liability of the shareholders can be erased. This can happen if it is proven that there is bad faith on the part of the shareholders or there has been a mixing of the shareholder's personal assets with the company's assets, so that a limited liability company is established only as a tool to be used for the personal interests of the shareholders. , the principle of separate PT from shareholders needs to be removed by penetrating the corporate veil against the limited liability shield. [10]

2. Research Methods

Research Type

This legal research is normative legal research. Used for research analysis that is guided by laws and regulations studies. This research study is normative considering that the discussion is based on the applicable laws and regulations. This study uses doctrinal research, namely research that produces a systematic explanation of the legal rules governing a particular legal category. [11] Explain the relationship between legal rules, define difficult areas, and predict future developments.

Problem Approach

In legal research there are various approaches. The writing of this research uses a statute approach, a conceptual approach, and a comparative study approach.

The statute approach is an approach based on the analysis and interpretation of laws and regulations. [12] The laws and regulations used are the 1945 Constitution of the Republic of Indonesia, Law Number 40 of 2007 concerning Limited Liability Companies, Law number 11 of 2020 concerning Job Creation and Government Regulation number 8 of 2021 concerning Company Authorized Capital and Establishment Registration, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises. The conceptual approach departs from the views and doctrines that have developed in the science of law. [13] Various legal concepts, legal theories, and legal principles regarding individual companies, the theory of the organs of the company are the basis for forming arguments.

A comparative approach is an approach that is taken by comparing the laws of a country with laws from one or more other countries regarding the same matter or comparing court decisions in several countries for the same case. Various arrangements regarding individual companies in other countries can be used as complementary references in this study.

3. Discussion

3.1. Implementation of individual company specifically for micro small medium business without complete company organs

3.2. Implementation of a Limited Liability Company according to the Company Law

Indonesia is a country that adheres to the concordance principle, the concordance principle is the principle that makes Indonesia adhere to Dutch law. [14] The concordance principle means that a country adheres to the laws brought by the colonizing country, in this case Indonesia adheres to the legal rules of the Netherlands. Arrangements regarding limited liability companies in Indonesia were adopted from the legal system brought by the country that colonized Indonesia, namely the Netherlands. The legal regulations in force in Indonesia based on the concordance principle include: the Criminal Code which originates from Wetboek van Straafrecht, Burgerlijk Wetboek (hereinafter referred to as BW) which is still valid for agreements, and Wetboek van Koophandel which applies in Indonesia under the name of the Book The Law on Commercial Law (hereinafter referred to as the Criminal Code).

The term Limited Liability Company (PT) used in Indonesia was originally brought from the Netherlands and was called the term (Naamloze Vennootschap) abbreviated as NV. [15]

Limited Liability Companies in the Criminal Code are regulated in the first book, the third title, the third section entitled Limited Liability Companies. Companies are regulated in articles 36-56 of the Criminal Code. In that part in article 38 of the Criminal Code states the existence of limited companies, it can be concluded that a limited liability company consists of shares so that conceptually a limited company is a legal entity which consists of two words, namely company and limited. The word company refers to shares or shares and the word limited refers to the responsibility of shareholders only to the extent of the

[10]AnnerMangaturSianipar, 2021, Perkembangan Hukum PT Perorangan (One-Peson Company), PenerbitQiara Media, Pasuruan, h. 336

[11]Peter Mahmud Marzuki, 2005, Penelitian Hukum,Kenacana,Jakarta, h.32

[12]Peter Mahmud Marzuki, 2014, Penelitian Hukum Edisi Revisi, Kencana, Jakarta, h.136

[13]Ibid, h.177

[14]Tri Jata Ayu PrMesti, "Pengertian Asas Konkordasi dan Sejarahnya di Indonesia' www.hukumonline.com diakses pada tanggal 23 Mei 2023

[15]Rudhi Prasetya, Kedudukan Mandiri Perseroan Terbatas Disertai Dengan Ulasan Menurut Undang-Undang No. 1 Tahun 1995, dikutip dari Ridwan Khairandy, 2014, Pokok-Pokok Hukum Dagang Indonesia, Ctk. Kedua, FH UII Press, Yogyakarta, hlm. 63.

capital/share placed in the company.
The development of Limited Liability Companies was further regulated in Law number 1 of 1995 concerning Limited Liability Companies (hereinafter referred to as the 1995 Company Law), amended by the Company Law and finally amended by the Job Creation Law.
Limited liability company arrangements in the 1995 Company Law on Limited Liability Companies were issued as lex specialis from company arrangements in the Criminal Code and Burgerlijk Wet boek. With the change in these rules, Limited Liability Companies that have been legalized prior to the enactment of this law, as long as they do not conflict with their articles of association, can remain valid. Meanwhile, companies that have been established and legalized under the Commercial Code must adapt and are given 2 years from the date the 1995 Company Law came into force. Is a capital association in article 1 number 1 which states that: a limited liability company is a legal entity established based on an agreement, conducting business activities with an authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations? The article also confirms that a limited liability company is established by at least two people because it must be established based on an agreement.
The next change in regulation regarding the limited liability company is the ratification of the PT Law. The Limited Liability Company Law reinforces the concept of a limited liability company as a capital partnership which includes it in the general provisions in article 1 number 1 of the Limited Liability Company Law which reads: "Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with capital all of which are divided into shares and meet the requirements stipulated in this Law and its implementing regulations." In addition, the new arrangements stipulated in this law include Social and Environmental Responsibility which adopts the concept of Corporate Social Responsibility, changes in company capital, affirmation of the responsibilities of company management and registration of companies that have utilized information technology so that company registration can be done. through the General Law Administration (AHU).
The regulation regarding the next limited liability company underwent changes to the Job Creation Law. The government wants to accelerate economic growth and facilitate investment in Indonesia, so President Joko Widodo, together with the legislative body, formalized the first omnibus law in Indonesia, namely the Job Creation Law. To support this law, implementing regulations were issued which were divided into several clusters, namely [16]:
1. Licensing and Sector Business Activities: 15 PP
2. Cooperatives and MSMEs and Village Owned Enterprises (BUMDes): 4 PP
3. Investment: 5 PP and 1 Presidential Decree
4. Employment: 4 PP
5. Fiscal Facilities: 3 PP
6. Spatial Planning: 3 PP and 1 Perpres
7. Land and Land Rights: 5 PP
8. Environment: 1 PP
9. Construction and Housing: 5 PP and 1 Presidential Decree
10. Economic Zones: 2 PP
11. Government Goods and Services: 1 Perpres

The journey for the Job Creation Law to the point where this article was written by the researcher has had a long journey, the Job Creation Law in 2020 was challenged to the Constitutional Court, as a result of which the Constitutional Court decision number 91/PUU-XVII/2020 reads that: Declaring the establishment of the Job Creation Law is contradictory with the 1945 Constitution of the Republic of Indonesia and does not have binding legal force on a conditional basis as long as it is not construed that corrections have not been made within 2 (two) years since this decision was pronounced. [17]
Citing the official website of the Constitutional Court, the Public Relations of the Constitutional Court stated that: The Job Creation Law will remain in force until repairs are made in accordance with the time limit specified in this decision [18].
In the decision of the Constitutional Court Number 91/PUU-XVIII/2020, the Constitutional Court gave a maximum period of 2 years to legislators to make improvements to the year since the decision was pronounced. If improvements are not made within this time limit, the Job Creation Law will be declared permanently unconstitutional.
The Constitutional Court also ordered the Government to suspend all actions or policies that are strategic in nature and have broad implications and it is also not justified to issue new implementing regulations relating to the Job Creation Law.
Quoting the official website of the Constitutional Court in the legal considerations read out by Constitutional Justice Suhartoyo, the procedure for forming the Job Creation Law is not based on a definite, standard and standard way and method, as well as a systematic law formulation. Then, in the formation of the Job Creation Law, there was a change in the writing of several substances after the joint approval of the DPR and the President. [19].
The Constitutional Court is of the opinion that the process for establishing the Job Creation Law is formally flawed because it does not comply with the provisions based on the 1945 Constitution of the Republic of Indonesia, so it must be declared formally flawed," said Suhartoyo. [20].
The Constitutional Court also explained the reasons for the Job Creation Law being declared conditionally unconstitutional. This is because the Constitutional Court wants to avoid legal uncertainty and the bigger impact it causes. Then, the Court considers that it must balance between the requirements for the formation of a law which must be fulfilled as a formal requirement in order to obtain a law that fulfills the elements of legal certainty, benefit and justice. Apart from that, continued Suhartoyo, one must also consider the strategic objectives of establishing the Job Creation Law [21].
"Therefore, in enforcing the Job Creation Law which has been conditionally declared unconstitutional, it will have juridical consequences for the applicability of the a quo Job

[16]Andrean W, Finaka,"11 Cluster Peraturan Pelaksana UU Cipta Kerja", www.Indonesiabaik.id, diakses pada tanggal 20 Januari 2023
[17]Putusan MK nomor 91/PUU-XVII/2020
[18]MK: Inkonstitusional Bersyarat, UU Cipta Kerja Harus Diperbaiki dalam Jangka Waktu Dua Tahun, www.mkri.id diakses pada 19 Mei 2023
[19]ibid
[20]ibid
[21]ibid

Creation Law, so that the Court provides an opportunity for legislators to amend the Job Creation Law based on the procedures for making laws that comply with the procedures and a definite, standard and standard method in forming an omnibus law which must also comply with the fulfillment of the requirements for the formation of a predetermined law," said Suhartoyo [22].

On December 30, 2022 the Government Issued Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as Job Creation Perppu). The House of Representatives of the Republic of Indonesia in the 19th Plenary Meeting for session IV for the 2022-2023 session at Senayan on Tuesday, March 21, 2023 officially approved the Job Creation Perppu to become Law and the issuance of Law number 6 of 2023 concerning Stipulation of Government Regulations Substitute Law Number 2 of 2022 concerning Job Creation to become Law (hereinafter referred to as the Ciptaker Law).

The limited liability company regulation in the Ciptaker Law has expanded in meaning because a limited liability company in this law can be established without an agreement but is limited to companies that meet the criteria for MSMEs. These arrangements are regulated in article 109 of the Ciptaker Law. The article contains changes to the general provisions in article 1 number 1 which reads:

"Limited Liability Company, hereinafter referred to as a company, is a legal entity which is an association of capital, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or individual legal entities that meet the criteria for micro and small businesses as regulated in the laws and regulations concerning micro and small businesses

3.3. Implementation of MSME Business Entities

Arrangements regarding MSMEs in Indonesia are regulated in Law number 20 of 2008 concerning Micro, Small Enterprises (hereinafter referred to as the MSME Law). In running MSMEs, a business entity is needed to support these activities. Business entities that meet the MSME criteria are regulated in article 1 of the UMKM Law which reads article 1

1. Micro Enterprises are productive businesses owned by individuals and/or individual business entities that meet the criteria for Micro Enterprises as regulated in this Law.
2. Small Business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or not branch companies that are owned, controlled, or become part either directly or indirectly of Medium or Large Businesses that fulfill the criteria for Small Enterprises as referred to 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 become a part either directly or indirectly with Small Businesses or Large Businesses with total assets net or annual sales proceeds as stipulated in this Law.

From the above regulations, it can be formulated that business entities that meet the criteria for MSME are individual business entities and business entities that are not subsidiaries or branches of companies that are owned, controlled or become part of either directly or indirectly with small businesses or large businesses with total net worth. or certain annual sales results. Business entities in Indonesia are divided into 2, namely legal entities and non-legal entities. Business entities with legal entities consist of Limited Liability Companies (regulated in the PT Law and the Ciptaker Law), Cooperatives (regulated in Law number 17 of 2012 concerning Cooperatives), and Foundations (regulated in 28 of 2004 concerning Foundations).

Whereas business entities that are not in the form of legal entities consist of Civil Partnerships (stipulated in articles 1618-1652 BW), Firms, and Limited Partnerships (regulated in articles 16-35 of the Criminal Code). It can be stated that the form of business entity within the scope of Micro, Small and Medium Enterprises is very broad.

The most important thing in determining whether a legal subject is included in the MSME criteria is the amount of net worth or annual sales results. Net worth is the amount of assets after deducting debts or liabilities

The grouping of MSMEs according to article 6 of the MSME Law is

Table 1

Criteria	Net Worth or Business Capital	Annual Sales Results
Micro business	At most 50 million	At most 300 million
Small business	50 million-500 million	300 million to 2.5 billion
Medium Business	500 million to 10 billion excluding land and buildings for business premises	2.5 billion to 50 billion

This regulation was amended with the issuance of the Ciptaker Law and Government Regulation number 7 of 2021 concerning Ease, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises. This grouping is based on article 6 of Government Regulation number 7 of 2021 concerning Ease, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises changes to:

[22] ibid

Table 2

Criteria	Criteria for Net Worth or Business Capital	Criteria from Annual Sales
Micro business	At most 1 billion	At most 2 billion
Small business	1 billion to 5 billion	2 billion to 15 billion
Medium Business	5 billion to 10 billion excluding land and buildings for business premises	15 billion to 50 billion

3.4. Establishment of Individual Companies specifically for MSMEs based on the Job Creation Law

Changes in regulations regarding Limited Liability Companies expand the regulations regarding Limited Liability Companies, the presence of arrangements 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 an individual company is known, which is commonly referred to as sole proprietorship or sole trader. [23] which is usually used as a description of individual companies in countries with legal systems common law.

This company was formed by one person, with capital and operated by the same person. But the concept of the company is contrary to the theory of corporate personality. The theory of corporate personality is a theory that assumes companies can take legal action and be accountable like humans [24]. One of them is contract theory. The contract theory says that a company as a legal entity is considered a contract between shareholders [25]. This is in line with Article 1 number 1 in conjunction with Article 7 paragraph (1) and (3) of the Company Law which reads:

Article 1 point 1 of the Company Law states that: Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is an association of capital, established based on an agreement, conducting business activities with an authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this Law as well as implementing regulations.

Article 7 paragraphs (1) and (3) of the Company Law:

(1) The company was founded by 2 (two) people or more with a notarial deed drawn up in the Indonesian language.

(2) Each founder of the Company is obliged to take part in shares at the time the Company was established.

(3) The provisions referred to in paragraph (2) do not apply in the context of Consolidation.

The above confirms that the Company Law regulates companies as capital partnerships and are established based on agreements

Based on the explanation above, it is understandable that the basic concept of an individual company regulated in the Ciptaker Law is clearly different from a limited liability company in the PT law. Basically, the choice to do business in the form of an Individual Company or is based on the ease of doing business. With the qualifications that only one person can form, this individual company does not need a deed of agreement for its establishment or the approval of other parties in dissolution.

In the Ciptaker Law regulations, further arrangements regarding Individual Companies are regulated in articles 153 A - 153 J, the contents of which are:

- Article 153 A regulates: the establishment of an individual company
- Article 153 B regulates: statement of establishment of individual company
- Article 153 C regulates: changes to the articles of association of individual companies
- Article 153 D regulates: the authority of the directors in individual companies
- Article 153 E regulates: founders and shareholders of individual companies
- Article 153 F regulates: Good Corporate Governance
- Article 153 G regulates: dissolution of individual companies
- Article 153 H regulates: changes in company status for micro and small businesses
- Article 153 I regulates: the cost of establishing an individual company
- Article 153 J regulates: the responsibility of shareholders in individual companies.

The rules regarding the establishment of an individual company are contained in article 153 A of the Ciptaker Law which reads:

1) Companies that meet the criteria for Micro and Small Enterprises can be founded by 1 (one) person.

2) The establishment of a Company for Micro and Small Enterprises as referred to in paragraph (1) is carried out based on a statement of establishment made in the Indonesian language.

3) Further provisions regarding the establishment of a Company for Micro and Small Enterprises are regulated in a Government Regulation.

Furthermore, in article 6 of 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 businesses which reads:

1) An individual company is established by an Indonesian Citizen by filling out a Statement of Establishment in the Indonesian language.

2) Indonesian citizens as referred to in paragraph (1) must meet the following requirements:

3) Individual companies obtain legal entity status after being registered with the Minister and obtaining an electronic registration certificate.

Furthermore, Article 7 paragraph (1) and (2) PP No. 8 of 2021 also states the format that must be filled in by the founder, namely:

1) The Statement of Establishment as referred to in Article 6 paragraph (1) is registered electronically to the Minister by filling in the form.

2) The format as referred to in paragraph (1) contains:

a. the name and domicile of the individual Company;

b. the period of establishment of individual companies;

c. purposes and objectives as well as individual Company business activities;

d. the amount of authorized capital, issued capital, and paid-up capital;

e. nominal value and number of shares;

f. individual company address; And

g. full name, place and date of birth, occupation, place of residence, identification number, and tax identification number of the founder as well as director and individual shareholder of the Company.With the presence of an individual company as regulated in the Job Creation Law, the

[23]Rudhy Prasetya, Op Cit. hlm 10

[24]M. Yahya Harahap,Op Cit, hlm 52

[25]Ibid. hlm 56

aspect of separation of assets is not so important and cannot be identified clearly. Mixing the assets of an individual company with the personal assets of the owner of the company is very likely to occur, given that the organs areone-tier [26], where the sole shareholder also doubles as a director without the need for a commissioner. This is different from the Company Concept in the Company Law which has 3 (three) main organs, namely the General Meeting of Shareholders (GMS), the Board of Directors and the Board of Commissioners. These three organs have clear roles and functional boundaries so that every decision and transaction of the company is properly recorded and monitored.

4. Implementation of Individual Companies specifically for MSMEs based on the Job Creation Law

Limited Liability Companies have three (3) dominant characteristics of Limited Liability Companies according to Rudhy Prasetya [27] yaitu:

4.1. Liability that arises is solely borne by the assets collected in the association

This is related to the company's status as a legal entity which is considered as a separate legal subject separate from individual shareholders, where the liability in a Limited Liability Company is limited to the paid-up capital. This characteristic is the characteristic that can most attract investors to invest in the form of a Limited Liability Company. A Limited Liability Company has the nature of being a capital association where the third party liability that arises is a loss only limited to paid-up capital and does not involve personal assets.

4.2. The nature of the mobility of 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 this participation right is that the stability of the accumulated capital can be maintained and not disintegrated, through the mobility character of the participation rights. Difficulties that have the potential to occur in the Firma concept in its nature as an association of people can then be avoided, for example if a shareholder dies then it can be transferred directly to his heirs or if the heirs do not wish to continue their participation then they can transfer it to other interested parties. In addition, conditions such as the renewal of the establishment of a limited liability company every time a member dies and difficult to maintain capital stability which often occurs in the form of a limited liability company can also be avoided given the mobility nature of the participation rights owned by a limited liability company.

4.3. The principle of management through an organ

The management of a Limited Liability Company in accordance with the provisions of the applicable laws and regulations is carried out by an organ, where this provision means that management cannot then be carried out by shareholders, but by a separate institution whose position is separate as a shareholder. [28]

A Limited Liability Company is like the 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: the General Meeting of Shareholders (GMS), the Directors and the 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 the establishment of an individual company stipulates that regarding registration, it is stated to fill in the full name, place and date of birth, occupation, place of residence, identification number and tax identification number of the founder as well as director and holder individual company shares.

This it is contrary to the Company Law and article 109 article 1 number 2 of the Ciptaker Law which reads that the Company's organs are the General Meeting of Shareholders, Directors and Board of Commissioners. The position of PP is in accordance with the principle of preference lex superiori derogate legi inferiori, which means that higher laws and regulations negate lower laws and regulations.

The following table compares the arrangements regarding the organs of the company from the regulations regarding limited liability companies:

Table 3

	KUHD	Company Law 95	Comany Law	Ciptaker Law
Directors	must exist	must exist	must exist	must exist
General Meeting of Shareholders	must exist	must exist	must exist	must exist
Commissioner	Not mandatory (see article 44)	must exist (see article 94 paragraph (2) For companies whose business field is mobilizing public funds, companies that issue debt acknowledgments, or public companies are required to have at least two Commissioners	must exist 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 Company Law)	Article 7 paragraph (1) and (2) PP No. 8 of 2021 concerning Company Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses: There is no obligation to fill in the data of the commissioners, only the data of the Directors and Shareholders (which are combined in one person)

[26]Biro Human Kementerian Hukum dan Hak Asasi Manusia RI, "UU Cipta Kerja Mungkinkan PT Didirikan Tanpa Akta Notaris, Menkumham: Ini Komitmen Pemerintah Wujudkan Kemudahan Berusaha" (Kemenkumham, 22 Februari 2021) https://www.kemenkumham.go.id diakses pada 15 April 2023

[27]Rudhy Prasetya, op cit hlm2 12

[28]Op Cit, hlm 19

The preference principle used by researchers to study this rule is the lex specialis derogate legi generalis principle. This principle means that specific laws override general laws. Then regarding the principle of lexspecialis derogate legi generalis, Bagir Manan argues [29]:

1. Provisions found in the general legal regulations remain in effect, except for those specifically regulated in the said special legal regulations
2. The provisions of the lex specialis must be equal 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 Code (KUH Dagang) is a lex specialis of the Civil Code (KUH Perdata) because it is in the same legal environment, namely the civil law environment.

The provisions regarding individual companies in the Ciptaker Law do not regulate anything more specific than what is regulated in the Company Law because the Ciptaker Law only renews the PT Law. The conclusion that researchers can draw is that the regulation regarding individual companies in PP 8 of 2021 is contrary to the Ciptaker Law and the Company Law.

5. Individual company liability especially for micro small medium business against third parties

5.1. Liability of Limited Liability Companies in Indonesia

In the Company Law, the liability of each organ of a limited liability company is regulated in more detail according to the needs and developments of the times. The arrangements for each organ of the limited liability company include:

a) Shareholders' Responsibilities:

According to Article 3 paragraph (1) of the Company Law, shareholders are not personally liable for engagements made on behalf of the Company and are not responsible for the Company's losses in excess of the shares they own. [30] The provisions in this article emphasize the characteristics of the Company that the shareholder is only responsible for the amount paid for all shares and does not cover his personal assets.

In the development of company law arrangements, there is a well-known doctrine, namely: piercing the corporate veil, this doctrine allows shareholders to be fully responsible for the losses of limited liability companies for mistakes they make if: (article 3 paragraph 2 of the Company Law) states that: The provisions referred to in paragraph (1) does not apply if:

a. The requirements of the Company as a legal entity have not been or have not been fulfilled;
b. The shareholder concerned, either directly or indirectly, in bad faith exploits the Company for personal gain;
c. The relevant shareholder is involved in an unlawful act committed by the Company; or
d. The shareholders concerned either directly or indirectly unlawfully use the Company's assets, which results in the Company's assets being insufficient to pay off the Company's debts.

a) Responsibilities of directors

The Board of Directors has a large responsibility in accordance with the amount of authority obtained from the law. The Board of Directors is fully liable personally (if the company only has 1 director) or jointly for losses suffered by the company if the person concerned is guilty or negligent in carrying out his duties.

Members of the Board of Directors cannot be held liable for the losses of the Company if they can prove [31]:

1. The loss was not due to his fault or negligence;
2. Has conducted management in good faith and prudence for the benefit and in accordance with the aims and objectives of the company;
3. Does not have a conflict of interest, either directly or indirectly, for management actions that result in losses;
4. Has taken action to prevent the loss from arising or continuing.

b) Responsibilities of the Board of Commissioners

The Board of Commissioners is a Company Organ whose job is to carry out general and/or special supervision in accordance with the articles of association and provide advice to the Board of Directors [32].

As a supervisor of the running of the company, the Board of Commissioners also has a big responsibility. As regulated in Article 115 paragraph (1-3) of the Company Law which reads:

1. In the event of bankruptcy due to the mistake or negligence of the Board of Commissioners in supervising the management carried out by the Board of Directors and the Company's assets are not sufficient to pay all of the Company's obligations due to the bankruptcy, each member of the Board of Commissioners is jointly and severally responsible with members of the Board of Directors for outstanding obligations repaid.
2. The responsibilities referred to in paragraph (1) also apply to members of the Board of Commissioners who have not served for 5 (five) years before the decision to declare bankruptcy was pronounced.
3. Members of the Board of Commissioners cannot be held responsible for the bankruptcy of the Company as referred to in paragraph (1) if they can prove:

a. The bankruptcy is not due to his fault or negligence;
b. Has carried out supervisory duties in good faith and prudence for the benefit of the Company and in accordance with the aims and objectives of the Company;
c. Has no personal interest, either directly or indirectly, in the management actions by the Board of Directors which result in bankruptcy; And
d. Has provided advice to the Board of Directors to prevent bankruptcy.

Based on the description above, it can be emphasized that there are 4 (four) parties who are liable for the company's losses; first, the shareholders who are liable are limited to the value of the shares invested in the company; secondly,

[29]Bagir Manan, 2004, Hukum Positif Indonesia (Suatu Kajian Teoritik), FH UII Press, Yogyakarta, hlm. 58

[30]Leks&co,"Tanggung Jawab Pemegang Saham dalam Perseroan Terbatas", www.hukumperseroanterbatas.com , diakses pada 1 Juni 2023

[31]Leks&co,"KewenanganTugas dan Tanggung Jawab Direksidalam Perseroan Terbatas", www.hukumperseroanterbatas.com , diakses pada 1 Juni 2023

[32]Leks&co,"Tanggung Jawab Direksi dan Dewan Komisaris dalam Perseroan Terbatas", www.hukumperseroanterbatas.com , diakses pada 1 Juni 2023

directors are only liable if they are guilty or negligent in carrying out their duties; third, the board of commissioners is also only liable if proven guilty or negligent in carrying out its supervisory duties; fourth, the Limited Liability Company itself as an independent legal subject.

5.3. Liability of Individual Companies specifically for MSMEs according to the Ciptaker Law

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

Article 153 J

1) Shareholders of the Company for micro and small businesses are not personally responsible for the engagement made on behalf of the Company and are not responsible for the Company's losses exceeding the shares owned

(2) The provisions referred to in paragraph (1) do not apply if:

a. The requirements of the Company as a legal entity have not been or have not been fulfilled;
b. The shareholders concerned, either directly or indirectly, use the Company for personal gain in bad faith;
c. The relevant shareholder is involved in an unlawful act committed by the Company; or
d. The shareholders concerned, either directly or indirectly unlawfully use 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 Ciptaker Law which are binding for individual companies are the same as the liability of limited liability companies regulated by article 3 of the Company Law, namely regarding the application of the doctrine piercing the corporate veil.

According to the observations of researchers, there has been no significant change in the regulation regarding corporate liability. Even though an individual company only consists of one person, for this reason the researcher wants to discuss further about the modern doctrinal view of limited liability companies and theories regarding limited liability companies which continue to develop along with the growth of the times.

6. Application of the Legal Doctrine of Limited Liability Companies Related to Liability of Companies against Individual Companies Specifically for MSMEs

The company's activities are carried out by the company's organs, and each organ of the company can be free from personal liability for engagements made on behalf of the company and are not responsible for the company's losses exceeding the value of its shares.

6.1. Piercing the Corporate Veil

Limited liability is not completely absolute, there are times when company management cannot be separated from limited liability. This matter is regulated in Article 3 paragraph (2) and Article 97 paragraph (3) of the UU Ciptaker and as written in the previous discussion in the Ciptaker Law article 153 J there is a doctrine piercing the corporate veil where the directors are fully responsible when the person concerned is guilty or negligent in carrying out his duties (not performing his duties in good faith).

Things that are done in violation of good faith include: the company's organs do not carry out their duties in accordance with the applicable laws and regulations, take actions that are not in accordance with the company's articles of association. In addition to violating laws and regulations and the company's articles of association piercing the corporate veil also applies when violated ultra vires and fiduciary duty.

6.2. Ultra Vires

The development of the business world in this modern era demands new legal rules that support healthy business behavior. The rule of law in the field of business is expected to develop according to the times. The more the business develops, the more violations such as fraud, fraud, fraud, and the like. For this reason, in Indonesia, through the Company Law, modern doctrines regarding company law have been incorporated, one of which is ultra vires.

Ultra vires in Latin it means to exceed the power or authority granted by law. This doctrine occurs when there is an excess of the authority of a limited liability company against the applicable laws and regulations, the provisions of the company's articles of association and the general meeting of shareholders. The term ultra vires is used for corporate actions (which are carried out by the directors and the board of commissioners). Examples of the company's actions include: [33].

1. Multiple Positions for Directors and Commissioners in several companies that are in the same business group which can lead to a conflict of interest.
2. Companies ignore many new statutory provisions, tend to be lazy to adjust policies with newly issued regulations because they cost a lot. This is usually related to licensing.
3. The financial recording system is not in accordance with general standards, this causes financial leaks in the company to be unknown.
4. Directors and Commissioners are appointed not according to their field of expertise.
5. There are many practices of nominee agreements or borrowing names for share ownership.

According to Rudhy Prasetya, with the existence of this ultra vires doctrine, the articles of association of a company are not only binding internally on the company but also binding on third parties.

In the Ciptaker Law the implementation of the ultra vires doctrine is contained in article 153 B of the Ciptaker Law and article 7 PP number 8 of 2021, this article regulates the statement of establishment of an individual company in that article it regulates what must be included in the statement of establishment. Some things that must be included in the statement of establishment include the aims and objectives, as well as business activities. This article protects third parties. When conducting transactions with individual companies, by including business activities, third parties can be careful if the directors of individual companies carry out business activities other than the business activities registered.

6.3. Fiduciary Duty

The explanation of the fiduciary duty principle is that each

[33]Ibid

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 (te geode trouw in Dutch).

The meaning of good faith in the management of the company has a broader meaning, including the obligation to be trusted, every organ of the company must be trusted (must always be bona fide) and must always be honest (must always be honest).) [34].

In the Company Law, arrangements regarding fiduciary duties are contained in article 97 paragraph 2 for Directors which reads:

Article 97

1) The Board of Directors is responsible for managing the Company as referred to in Article 92 paragraph (1).

2) The management as referred to in paragraph (1) must be carried out by each member of the Board of Directors in good faith and with full responsibility.

Meanwhile, the fiduciary duty of the Board of Commissioners is regulated in article 114 paragraph (2) of the Company Law which reads:

Article 114

1) The Board of Commissioners is responsible for supervising the Company as referred to in Article 108 paragraph (1)

2) Each member of the Board of Commissioners must act in good faith, prudently and responsibly in carrying out supervisory duties and providing advice to the Board of Directors as referred to in Article 108 paragraph (1) for the benefit of the Company and in accordance with the aims and objectives of the Company.

The Ciptaker Law for Individual Companies does not explicitly regulate this principle, researchers can only draw conclusions that this principle is regulated in article 153 F of the Job Creation Law which reads:

Article 153

1) The Directors of the Company for Micro and Small Enterprises as referred to 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 of PP 8 of 2021 it is stipulated that Individual Companies are required to submit financial reports every year (current accounting period) and in article 11 the Minister (Ministry of Law and Human Rights) issues proof of receipt of financial reports electronically. If the Individual Company does not submit financial reports, the Minister will issue administrative sanctions in the form of a written warning, termination of access rights or services; or revocation of legal entity status. In the opinion of researchers, the application of the principle of fiduciary duty to individual companies regulated in the Ciptaker Law is not optimal because there is no Board of Commissioners organ. Supervision of individual companies from the Ciptaker Law and PP number 8 of 2021 is relatively weak because there are only administrative sanctions. In the absence of the Board of Commissioners, it is already necessary to carry out checks and balances on the Shareholders and Directors, which are 1 person, so that the principles of good corporate governance are difficult to achieve and will harm third parties when conducting transactions with individuals.

6.3. Business Judgment Rule

The Business Judgment Rule doctrine is also known as the business decision doctrine, this doctrine protects business decisions taken by directors from being contested by other parties as long as the directors meet the following requirements [35]:

1. Business decisions are in accordance with applicable laws and regulations
2. Done in good faith
3. Done with the right purpose (good purpose)
4. The decision is based on rational basis
5. Done with due care
6. Done in a way that is reasonably believed (reasonable belief) as the best decision (best interest) for the company

This doctrine exists to protect directors in carrying out every business decision taken. This doctrine is in line with the doctrine that the researcher has written, such as the doctrine of fiduciary duties because both are regulated in Article 97 of the Company Law. This doctrine is not accommodated in the Job Creation Law or the laws and regulations that are its derivatives because the principles of good faith and the principles of good company management are only focused on periodic financial reporting.

7. Closing

7.1. Conclusion

1. The implementation of individual companies, especially MSMEs that have incomplete company organs, is regulated through the Ciptaker Law and PP number 8 of 2021 after researchers examined it, it turned out that these regulations conflict with the Company Law and the Ciptaker Law itself. In the opinion of researchers, if the Indonesian government wants to make more comprehensive arrangements regarding individual companies so that they do not collide with the preference principle.

2. The provisions regarding liability for limited liability companies from the Criminal Code to the Ciptaker Law have not changed much, legislators always make regulations that protect the position of a limited liability company as long as the organs within the limited liability company do not make mistakes/do not violate the authority obtained from the company's articles of association and applicable laws and regulations. With the enactment of the Ciptaker Law, which broadens the definition of a Limited Liability Company with the existence of an Individual Company, according to researchers, the existence of an Individual Company whose shares are only owned by one person makes the Individual Company not have a good system of checks and balances so that it has the potential to harm third parties.

7.2. Suggestion

1. Rules regarding individual companies in other countries have existed longer than Indonesia, but regulations regarding individual companies in Indonesia are very basic and need to be developed. It's easy to set up an individual company in

[34]M. Yahya Harahap, Op. Cit, hlm 374

[35]Munir Fuady, 2014, Doktrin-Doktrin Modern DalamCorporate Law Dan EksistensinyaDalamhukumIndonesia, Penerbit PT Citra Aditya Bakti, Bandung, hlm 186

Indonesia, even though it's intended to facilitate doing business, but this rule is very easy to abuse. It's good to set up an individual company specifically for MSMEs, given a number of requirements that can be used as the first filter to avoid abuse of the convenience that this rule creates, things to emulate include:

1. Before establishing an individual company, the party that is establishing it must show a business license.
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 the individual company's finances to an accounting office, and if there are suspicious findings, the shareholders are fully responsible for the debts of the individual company.

2. In running the company, there are principles of Good Corporate Governance, in which there are modern doctrines regarding Limited Liability Companies such as piercing the corporate veil, ultra vires, fiduciary duties, and business judgment rules. Supervision of the activities of individual companies without commissioners and supervised only by the Ministry of Law and Human Rights will feel very lame. The establishment of an individual company is also made very easy considering the purpose of establishing this rule is to support ease of doing business but with this facility it is prone to abuse and law smuggling occurs. Suggestions from researchers are that the terms of establishment are made more detailed and strict so that the potential for law smuggling is reduced. According to what the researchers wrote above, it is better for Indonesia to add new qualifications regarding the rules of establishment such as one person can only establish one individual company.

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