
JURIDICAL REVIEW OF CREATION LAW IN INDONESIA PERSPECTIVE OF PT UMK LAW BODY

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ABSTRACT

This research examines the juridical review of the regulation of Limited Liability Companies for micro and small businesses as regulated in the Job Creation Act 2020. The legal issue in this research is how the regulation and the enforcement of Limited Liability Company arrangements for micro and small businesses is regulated in the the Job Creation Act 2020. This research method is a normative juridical study that examines legal principles and legal norms using secondary data. While the data analysis method used was qualitative methods and the data collection tool used was document study. The result of this research is that the regulation of PT UMK is based on Article 109 of the Job Creation Act 2020 which changes some of the provisions for regular PT in the Company Law 2007. The characters of Limited Liability Companies for micro and small businesses include one person being established, determining the amount of capital based on the decision of the company founder, the establishment of PT UMK based on a letter statement of establishment which contains the intent, purpose, authorized capital, and other information, PT UMK will obtain legal entity status after being registered to the Minister and obtaining proof of registration. The enforcement of Limited Liability Company arrangements for micro and small businesses based on the Job Creation Act 2020 comes into force and has binding power on the date of promulgation to state gazette.

Keywords: Limited Liability Companies, Micro and Small Enterprises, Job Creation Act.

INTRODUCTION

The existence of a Limited Liability Company has resulted in many successful companies developing. Millions of companies around the world have succeeded in growing through “limited company by share”. It not only makes the investors (shareholders) happy, but also creates more job opportunities and higher tax revenues, which ultimately makes the economic life of the community easier⁽¹⁾.

Limited Liability Company (hereinafter referred to as PT) is a dream and dream for business actors because this form of business entity is considered very ideal in following the rapid economic development of mankind. Therefore, the government tries to facilitate the community, especially those who have small and medium-sized businesses to choose the form of a Limited Liability Company business by issuing the Job Creation Law on October 5, 2020.

Micro, Small and Medium Enterprises (hereinafter referred to as MSMEs) are the backbone of the Indonesian economy according to Yos Harmen (Head of Regional IV of the Investment Coordinating Board). It is undeniable that many Indonesians are engaged in the MSME sector, especially now during the COVID-19 pandemic. There are many layoffs in the company so that trading through MSMEs is one way out to make a living.

With a strong legal basis, this means that MSMEs are protected from bankruptcy. If, for example, MSMEs go bankrupt, only the business entity is affected (bankruptcy), the household (kitchen) is not disturbed. This is because so far MSMEs are not legal entities such as limited liability companies where the responsibility of the MSME owner is up to his personal assets.

Limited Liability Company is an extraordinary invention by mankind because of its very profitable characteristics. The advantages of choosing a Limited Liability Company as a business institution include the Indonesian company law, the principle of limited liability and separate entity, the liability of the shareholders or founders is limited to the capital deposited in the company, the existence of legal protection for the company as a legal entity based on approval from the minister, many alternatives the type of business carried out as stipulated in the Indonesian Standard Classification of Business Fields (KBLI), and other benefits.

MSMEs have been the foundation for the lower middle class to depend on the economy, especially during the COVID-19 pandemic where there are many layoffs. Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises has facilitated the form of MSMEs that can be established with the legal construction of individuals or business entities. Business entities consist of business entities that are legal entities and business entities that are not legal entities. Limited Liability Company as a legal entity can be an alternative for SMEs in Indonesia, especially after the enactment of the Job Creation Law.

A limited liability company is an "artificial person", which is a legal entity that is intentionally created⁽²⁾. PT independence guaranteed by law is no longer carried out by the owners or shareholders of the company, but is run by the board of directors⁽³⁾. Until now, the establishment of PT in accordance with the PT Law is classified as a double legal act⁽⁴⁾. PT has the principle of separate entity and limited liability. Separate entity is a principle which states that shareholders cannot own or transfer assets owned by the company to third parties⁽⁵⁾.

In the midst of the pros and cons to the ratification of Law Number 11 of 2020 on Copyright (hereinafter referred to as the Copyright Law). a few days ago, there was a need for a legal study of the material contained therein. On this occasion, the author will review the legal aspects of limited companies for small and micro enterprises in the Copyright Law. as for the two main issues as legal issues, namely the regulation of Limited Companies for micro and small businesses regulated in the Copyright Law and the validity of the regulation of Limited Companies for micro and small businesses regulated in the Copyright Act 2020

METHODS

The form of this research is normative juridical, namely by examining written legal norms directly with the main issues that are discussed in this study. The data used in this study, namely secondary data that was not obtained directly from the field but through the process of searching for library materials, and in the form of secondary legal materials in the form of theories taken from various literatures, the 1945 Constitution of the Republic of Indonesia and the laws and regulations. invitation.

Researchers used data collection tools in the form of document studies and theories as well as existing regulations. The data analysis method used in processing the data related to this research is a qualitative method because the data processing is not done by measuring the related secondary data, but analyzing the data descriptively. In the qualitative approach, the research procedure produces descriptive analytical data

RESULTS And DISCUSSION

Business law in Indonesia recognizes three subjects of business law, namely individuals (natuurlijke persoon), non-legal entities, and legal entities (rechtspersoon). Each of these three forms has its own character and characteristics. The existence of business institutions in Indonesia can be seen from daily business practices. These business institutions include individual businesses/trading businesses, Limited Liability Companies (hereinafter simply referred to as PT), State-Owned Enterprises, Village-Owned Enterprises, Limited Partnerships (Commanditaire Vennotschaap), Firm Partnerships, Civil Partnerships, Foundations, Cooperatives, Associations, Banks, and local companies.

There are several important factors that make the development of the investment climate in Indonesia an investor's goal, namely: the existence of regulations or policies that support foreign investors to invest in Indonesia; large workforce with relatively low wages, wide production market due to Indonesia's large population, available natural resources, political stability, legal certainty and consistency of regulations and their application⁽⁶⁾.

In principle, every human being is given the freedom to choose what form of business entity he wants according to his business objectives and business characteristics. However, it cannot be denied that PT is a form of business entity that is superior to other business entities. The advantages of the PT are reflected in the characteristics of the PT which are regulated in the legislation.

PT in Indonesia is subject to the provisions of several laws and regulations including Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the 2007 Limited Liability Company Law),

Law Number 25 of 2007 concerning Investors, Law Number 8 of 1995 concerning Capital Market, Law Number 19 of 2003 concerning State-Owned Enterprises (for PT Persero/PT BUMN), and Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services.

The types of PT known in Indonesian law are PT Open, PT Closed, PT Persero, PT PMA, Public PT, PT Persero (Tbk). These types of PT are subject to the above laws and regulations and their implementing regulations. With the issuance of the 2020 Job Creation Law on October 5, 2020, there is a new PT entity that is present and becomes an option for the community to establish a business institution, namely PT UMK (Limited Company for Micro and Small Businesses).

A Public Company is a Public Company or a Company that conducts a public offering of shares, in accordance with the provisions of the laws and regulations in the capital market sector. While a Public Company is a Company that meets the criteria for the number of shareholders and paid-in capital in accordance with the provisions of the laws and regulations in the capital market sector. Indonesia has recognized and even adopted the concept of liability for the personal assets of shareholders in a PT⁽⁷⁾. Basically the limited liability of shareholders is the hallmark and advantage of a Limited Liability Company as a legal entity⁽⁸⁾.

According to Article 16 paragraph (3), if in the provisions of the Limited Liability Company Law there is no written abbreviation "Tbk", it means that the PT has a closed status. Thus, a closed PT is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations.

PT Persero is a BUMN in the form of a limited liability company whose capital is divided into shares of which all or at least 51% (fifty one percent) of its shares are owned by the Republic of Indonesia whose main purpose is to pursue profit. Article 1 paragraph (2) BUMN. Meanwhile, PT Persero (Tbk) or a Publicly Listed Company is a Persero whose capital and number of shareholders meet certain criteria or a Persero that conducts a public offering in accordance with the laws and regulations in the capital market.

Limited Liability Company as one of the pilots of national economic development⁽⁹⁾ in Indonesia is a special legal entity when compared to other business entities or legal entities. The main differentiator is the limited liability of PT. This limited liability can be seen from Article 3 paragraph (1) of the Law on PT. Shareholders of the Company are not personally responsible for the engagements made on behalf of the Company and are not responsible for the Company's losses in excess of the shares owned.

This limited liability exists because of the nature of the PT itself, namely the partnership of capital. This is certainly different from the character of other business entities which are partnerships of people. In a capital partnership, capital from legal subjects is collected to form a new legal subject, namely PT. This also stems from the fact that the company refers to the company's capital consisting of holdings or shares. The principle of this capital partnership will distinguish PT from other business entities.

The theory of legal entities that focuses on the will to personify a legal entity as if it were a human being, has not provided protection to shareholders or stakeholders. To complement and at the same time as a development of the theory of legal entities, corporate legal doctrines were born, namely Piercing the Corporate Veil, Fiduciary Duty Doctrine, Self-Dealing Transaction Doctrine, Corporate Opportunity Doctrine, Business Judgment Rule Doctrine, Ultra Virus Doctrine and Intra Vires Doctrine. The legal doctrine as mentioned above, in essence, is to provide theoretical and philosophical foundations to the people behind a business entity or company, namely the shareholders, the Board of Directors and the Board of Commissioners, so that they do not violate the principles of justice in managing the company, including stakeholders, namely parties related to the company, including employees and company relations. Therefore, in the preparation of legislation related to a company, the legal doctrine must be respected⁽¹⁰⁾.

The legal aspects of the company or company law underwent changes after the enactment of the Job Creation Act on October 5, 2020. The PT provisions which were originally regulated in the 2007 Limited Liability Company Law were amended as stipulated in Article 109 of the CK Law. Regarding the articles concerning PT that are amended in the 2020 CK Law, the author will call it the 2020 PT Law to facilitate the analysis of this research.

PT UMK is a new form of PT that is mandated by the 2020 CK Law. PT UMK is regulated in Article 109 of the CK Law which changes several things in the 2007 PT Law. PT UMK is not explicitly defined in Article 1 which contains a definition but is explained separately and implicitly in the Law. According to the 2020 CK Law, PT UMK is a company that meets the criteria for micro and small businesses. Micro and small businesses themselves are regulated in the provisions of laws and regulations in the field of micro, small and medium enterprises, including Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (hereinafter referred to as the MSME Law).

In the 2007 Limited Liability Company Law, the 2007 Limited Liability Company Law and its implementing regulations apply. This is as regulated in Article 1 paragraph 1. Meanwhile, the 2020 CK Law applies broader provisions, namely statutory regulations (PUU). This provision legally confirms the mandate of Article 4 of the 2007 Limited Liability Company Law, namely that this law applies to the Company, the Company's articles of association, and the provisions of other laws and regulations. PUU itself is very broad as we know it is regulated in Article 7 of Law Number 12 of 2011 concerning the formation of PUU (PUU hierarchy). The PUUs are:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations in Lieu of Laws;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations; and
7. Regency/City Regional Regulations.

PT UMK as a new form of PT must comply with the requirements of the PT Law and also other PUUs, in this case the MSME Law. According to the MSME Law, there are 4 types of MSME groups, namely micro-enterprises, small-scale businesses, medium-sized businesses, and large businesses. Because the regulation of PT UMK in the CK Law only stipulates PT UMK for businesses that meet the criteria for micro and small businesses, PT UMK can only be established by groups of MSMEs, micro and small businesses, while medium and large businesses are not allowed.

The following is the text of the provisions for micro and small businesses in the MSME Law:

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.

Small Business is a productive economic business that stands alone, which is carried out by individuals or business entities that are not subsidiaries or branches of companies that are owned, controlled, or become part of either directly or indirectly from Medium Enterprises or Large Businesses that meet the Business criteria. Small as referred to in this Law.

The ratification of the 2020 CK Law is a noble breakthrough by the government together with the DPR because in it there are conveniences and preferential treatment for PT UMK. The first is related to the ratification of PT UMK as a legal entity. In the UUCK there is a regulation on the acceleration of the status of a legal entity. According to article 7 of the 2020 UUPT, a PT obtains the status of a legal entity after being registered with the Minister and obtaining proof of registration.

A PT will get the status of a Legal Entity if it meets two cumulative requirements, namely that it has been registered by its founder and has obtained proof of registration. In practice, the PT registration process is carried out online at the oss.go.id website as regulated in Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Services. The acquisition of legal entity status after the company is registered and obtains proof of registration applies to limited liability companies in general and to PT UMK.

This arrangement is very different from the norms contained in the 2007 Limited Liability Company Law where the PT will get the status of a Legal Entity after being ratified by the minister. This ministerial ratification is in the form of a decree from the Minister of Law and Human Rights of the Republic of Indonesia which contains the date and number of the letter. The existence of this ministerial decree is usually used in the making of the relevant PT deed. These deeds include the deed of cooperation between PT and third parties, the deed of the General Meeting of Shareholders, or the deed of amendment to the articles of association of PT.

The acquisition of PT Legal Entity status in the 2020 PT Law also deviates from the company's legal norms, namely, a business entity will have a legal entity status if it has been approved by the state which is in our country by the Minister of Law and Human Rights. After being registered, the substance of the business entity will be checked first by the minister whether it meets the criteria for a legal entity or not. Registration is actually a formal examination only, while material examination is in the process after registration until the issuance of a ministerial decree.

Other legal entities in Indonesia have the same arrangement regarding the ratification of legal entities which will be obtained after obtaining a ministerial decision. The legal entities are cooperatives, foundations, and associations with legal entities. All these legal entities obtain legal entity status after being ratified by the minister as stated in a ministerial decree.

The author criticizes the regulation of obtaining legal entity status after the PT is registered and obtains the registration evidence mentioned above so that it can be reviewed either through the ratification of a Government Regulation in Lieu of Law by the President or by going through a judicial review to the Constitutional Court. The reason is that the phrase "registration" is very risky because there could be a PT that is intentionally fabricated for a certain agenda or interest such as fake tenders, money laundering, etc. Individuals who set up PT easily obtain BH status because they only need to register. Another reason is that this regulatory norm deviates from the norm for ratification of legal entities.

If this provision is enforced, of course it will degrade the value of the PT itself because now non-legal entities must also be registered with the Minister of Law and Human Rights in accordance with the mandate of the Minister of Law and Human Rights Regulation Number 17 of 2018 concerning Registration of Limited Partnerships, Firm Fellowship, and Civil Partnership (non-BH BU will get a Registered Certificate/SKT).

The non-legal entity business entities are Limited Partnership (Commanditaire Vennotschaap), Firm Partnership and Civil Partnership. Non-Legal Entity Business Entities do not register themselves because they are assisted by a Notary by authorizing a registration application to the SABU (Business Entity Administration System). The notary will then register and manage the administration in the PT Menkumham system (dirjen AHU) which is currently integrated in the OSS (online single submission). Then if PT UMK is not assisted by a Notary, its management in the AHU and OSS systems will later experience difficulties.

Legal consequences as a Limited Liability Company (PT) that has not been a legal entity⁽¹¹⁾:

- 1) There is no separation between the assets of the company and the assets of the shareholders.
- 2) The responsibility of the company for obligations to other parties is the responsibility of the shareholders and management of the company.
- 3) Cannot own assets in the name of the company.
- 4) Unable to obtain certain permits related to the company's business

Furthermore, related to PT capital, there are also changes to the provisions. Historically, the minimum capital for PT has undergone several changes. The minimum capital for PT in 1995 to 2007 (according to the 1995 PT Law) is set at a minimum of 20 million, from 2007 to 2016 it is set at least 50 million, in 2016 the minimum capital of PT is based on the agreement of the founder of PT. In Article 1 paragraph 3 of Government Regulation Number 29 of 2016 concerning Changes in the Authorized Capital of a Limited Liability Company, the authorized capital of a PT is determined based on the agreement of the founders of the Limited Liability Company. The minimum capital requirement for PT which is now applicable according to the 2020 CK Law is based on the decision of the founder of PT.

The next discussion is the registration provisions that must be prepared by PT UMK. According to the 2020 PT Law, PT UMK can be established by only one person. This arrangement is different from an ordinary PT which must be established by a minimum of two people. The establishment of PT UMK by one person means that PT UMK is a sole proprietorship. Sole proprietorships are also known as sole proprietorships or sole traders. This form of business is the simplest form of business to create⁽¹²⁾.

A sole proprietorship is different from a sole shareholder. The sole shareholder in the establishment of a PT Legal Entity should understand the consequences that arise when the subjective conditions in the establishment of a PT Legal Entity are not met, especially with regard to personal liability. The sole shareholder should, within

a maximum period of 6 (six) months as of the circumstances, be obliged to transfer part of his shares to another person or the Company to issue new shares to another person, so that the subjective requirements for establishing a PT Legal Entity are met⁽¹³⁾.

One of the main features of PTs is that their owners have limited liability. PT's individual assets may not be used to meet PT's debts and obligations. The shareholder's risk of loss is limited to the amount of capital invested in the inbreng of PT. However, it is possible that the courts may "break through the veil" and hold members accountable for the actions of the LLC if the member completely dominates the company, does not treat it as a separate entity, uses the PT to do wrong or injustice, or if it is deemed unfair to treat the organs of the PT and the company. separately⁽¹⁴⁾.

To the board of directors who take legal action against a company that has not been approved by a legal entity, if the legal action against the company will be held individually or jointly by them. So that if such an act occurs, the legal act is made the responsibility of the individual who did it and the legal action has nothing to do with the company⁽¹⁵⁾.

The establishment of PT UMK is done based on a statement of establishment made in Indonesian. Establishment of PT UMK does not require a deed of establishment made before a Notary as the establishment of ordinary PT. Whereas the deed of establishment of PT is an authentic deed that has perfect proving power as per Article 1868 of the Civil Code. Article 1870 of the Civil Code which reads:

Article 1868 Civil Code: An authentic act is an act made in the form prescribed by law by or before a public official authorized for it at the place where the act was made

Article 1870 Civil Code: For the interested parties and their heirs or for those who obtain rights from them, an authentic deed provides a perfect proof of what is contained therein.

The statement of incorporation contains the purpose, objectives, basic capital, and other information related to the Company's affiliation. This statement is a deed under hand that has the power of proof of one degree below the authentic deed meaning it is considered perfect if the parties acknowledge its existence and no one denies it. This statement of incorporation will be better if legalized by a Notary because of the certainty of the signature and date of making.

The strength of the proof of the statement above is very doubtful because it was not made before a public official (Notary). Because it is not an authentic deed, the strength of the proof is weak or the deed is under hands. Moreover, it has not been regulated regarding the obligation to affix the meterei and whether the statement letter will be legalized, warmerking, or just made without any additions. The government needs to further regulate the provisions of PT UMK into a government regulation to ensure its implementation and legal certainty for UMK businesses.

Furthermore, regarding changes to the company's establishment statement, it is also not regulated whether it is made in writing such as registration or made in an authentic deed. In the CK Law it is only stipulated that changes are determined by the shareholders and notified to the minister. This provision is very different from the company law provisions adopted in Indonesia as referred to in the 2007 Limited Liability Company Law.

From the explanation above, it can be concluded that PT UMK does not have a deed of establishment and articles of association because it only has a statement of establishment. The same provisions also apply when PT UMK undergoes changes where the changes are not made before a Notary but are also made by the shareholders and are simply notified to the minister. This provision also needs to be reviewed considering that the existence of the company's articles of association is very important for the sustainability of a legal entity, especially regarding the interests of third parties and their protection.

The legislators present the spirit of limiting responsibility to MSEs by regulating PT provisions for MSEs. This limitation of liability will reduce the potential for loss or bankruptcy for the owners of PT UMK because the shareholders of PT UMK are only responsible for the shares they own in accordance with Article 3 paragraph (1) of the 2007 Limited Liability Company Law, which reads in full as follows:

The shareholders of the Company are not personally responsible for the engagements made on behalf of the Company and are not responsible for the Company's losses in excess of the shares owned.

The limitation of responsibilities above will distinguish between MSEs that are legal entities in the form of PT and MSEs of non-legal entities such as civil partnerships or limited partnerships. The nature of the liability of non-legal entity UMK owners is up to personal assets (personal liability). No wonder it is often found that MSE businesses are losing money because personal assets will become the object of repayment of their commitments or debts.

Juridically, the limited liability of a limited liability company cannot be applied to all conditions. Shareholders will be personally responsible if they comply with Article 3 paragraph (2) of the 2007 Limited Liability Company Law, namely:

1. The requirements of the Company as a legal entity have not been or are not met;
2. The shareholders concerned, either directly or indirectly, in bad faith take advantage of the Company for personal gain;
3. The shareholder concerned is involved in unlawful acts committed by the Company; or
4. The shareholders concerned either directly or indirectly illegally use the Company's assets, which results in the Company's assets being insufficient to pay off the Company's debts.

Juridically, the enforcement of the PT UMK regulation follows the enforcement of the Job Creation Act. The Job Creation Law comes into force and is binding on citizens since it was promulgated on October 5, 2020. This is as regulated in Article 87 of Law Number 12 of 2011 concerning the Establishment of Legislation:

Article 87: Legislations come into force and have binding force on the date of promulgation, unless otherwise stipulated in the relevant Legislation.

The organs of PT UMK legally follow the provisions of Article 1 number 2 of the 2007 PT Law which consists of the Board of Directors, the Board of Commissioners, and the General Meeting of Shareholders. However, what the 2020 CK Law alludes to is only directors who are referred to as directors or directors. His task is to carry out the management of the Company for the benefit of PT UMK in accordance with its aims and objectives. He is authorized to carry out management in accordance with policies that are considered appropriate, within the specified limits.

The Board of Directors is managing the Company (beheer van daden), including the day-to-day management of the Company. The word "daily management of the Company" is in line with the views of experts in the field of business law who say that what is meant by management actions or in Dutch referred to as "beheer van daden" are any actions that are necessary or included in the class of actions that usually done to administer or maintain civil unions⁽¹⁶⁾.

According to Marida Farida Indrati Soeprato⁽¹⁷⁾ a new law that has been ratified can become generally binding when promulgated in a national paper. Copyright Laws will take effect and are generally binding when promulgated by the government in the state gazette. The Copyright Law shall come into force on the date of promulgation as per article 186 of the Law.

CONCLUSION

The regulation of PT UMK is based on Article 109 of the Job Creation Act 2020 changing some provisions of ordinary PT in the 2007 PT Law. The characteristics of PT UMK include one person being able to establish the amount of capital, the determination of the amount of capital based on the decision of the founder of the company, the establishment of PT UMK based on a statement of establishment containing the intent, purpose, authorized capital, and other information, PT UMK obtains legal entity status after being registered with the Minister and obtaining proof of registration. The enforcement of the Limited Liability Company regulation for micro and small businesses based on the Job Creation Act begins and has binding force as of the date of promulgation

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