

Legal Analysis of the Establishment of a Sole Proprietorship Based on PP No. 8 of 2021

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ABSTRACT

The government formed a draft law on job creation which aims to facilitate the business climate in Indonesia. This bill is included in the 2020 Prolegnas priority list and is expected to increase Indonesia's ease of doing business ranking in the world, especially related to indicators of starting a business which lags behind neighboring countries and ranks fifth at the ASEAN level. For this reason, the Government has created a breakthrough so that everyone can easily start a business, especially for Micro and Small Enterprises (UMK). A number of clusters of Draft Laws have been prepared and one of these sub-clusters is related to the formation of business entities. In order to realize the ease of doing business, there is a need to form a new type of business entity, especially for Micro and Small Enterprises in the form of a Limited Liability Company (PT) which was established by one person. Individual Limited Liability Companies are expected to provide convenience for Micro and Small Business actors in forming companies with minimum requirements and capital. By using the normative juridical method, this article discusses the concept of an individual limited liability company by comparing the arrangements with other countries so that it can be a lesson for Indonesia if it wants to make this happen. From the results of the study, appropriate and comprehensive arrangements are needed in order to realize a Limited Liability Company for Micro and Small Businesses in order to support the ease of doing business in Indonesia.

Keywords : Individual Company, Micro and Small Business, Notary, Authority, Cooperation

1. INTRODUCTION

A limited liability company is a legal entity in the form of a capital partnership which is established with an agreement between 2 (two) or more people who carry out business activities with authorized capital where the entire authorized capital is divided into shares and the implementing regulations and requirements are regulated in Law Number 40 of the Year 2007 concerning Limited Liability Companies, hereinafter referred to as the Limited Liability Company Law.

The Limited Liability Company Law states that a Limited Liability Company must be established by a minimum of 2 (two) people or more. However, this rule does not apply to Limited Liability Companies, State-Owned Enterprises or Limited Liability Companies regulated in Law Number 8 of 1995 concerning Capital Markets, including Depository Institutions, Clearing and Guarantee Institutions, Stock Exchanges and others.

Some time ago, Indonesia was warmed by the existence of Law Number 11 of 2020 concerning Job Creation, which included 49 (forty-nine) implementing regulations. The most



dominant thing discussed is the existence of new types of business entities. This type of business entity is created to make it easier for Micro and Small Business actors to develop their business.

In Article 153 A of the Job Creation Law it is regulated that “Companies that meet the criteria for micro and small businesses can be founded by 1 (one) person.”. Companies for Micro and Small Enterprises are further regulated in Government Regulation Number 8 of 2021 concerning the Authorized Capital of Companies and Registration of the Establishment, Changes and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises (Company PP).

Based on Law Number 40 of 2007 concerning Limited Liability Companies, Article 7 paragraph 1 states that "The Company is established by 2 (two) or more people with a Notarial deed made in Indonesian." So the founders will take their respective shares in the company. This provision is normal because a Limited Liability Company is a legal entity which is a capital partnership established based on an agreement. So according to the law, a limited liability company is an agreement. So it is impossible for a company to be founded by just 1 (one) person because the law cannot bind the promises of people who make promises to themselves. That's why there must be a minimum of 2 (two) people who promise each other.

Government regulations regarding the establishment of Limited Liability Companies for Micro and Small Businesses were created to make it easier for business actors to make investments. The Job Creation Law has changed, deleted and established new regulations in several laws. Business actors who wish to establish a Limited Liability Company under 2019 are required to make adjustments by following the regulations contained in the Job Creation Law and Government Regulation Number 8 of 2021 in order to obtain a Business Identification Number (NIB) via Online Single Submission (OSS). Government Regulation Number 8 of 2021 is actually a form of government support as an ease of doing business program (ease of doing business) in Indonesia.

2. RESEARCH METHODS

To obtain the material obtained to prepare and discuss the problems in this research, the author used the Normative Juridical Method, namely in analyzing the problem by examining library materials or secondary data as basic material for research by conducting searches of related regulations and literature. with the problem under study.



3. RESULTS AND DISCUSSION

Authority To Establish Limited Companies of Micro And Small Enterprises Can Eliminate The Role of The Notary

As explained in the explanation of Law Number 40 of 2007 concerning Limited Liability Companies, national economic development is carried out based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, and maintaining a balance of progress and national economic unity with the aim of realizing prosperity. public.

One form of business that has an important role in the economy is a Limited Liability Company (PT), in Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies it is explained that it is a legal entity which is a capital partnership, established based on an agreement and carrying out business activities with its entire authorized capital. divided into shares and meets the requirements stipulated in Law Number 40 of 2007 concerning Limited Liability Companies and its implementing regulations. The word "company" refers to its capital which consists of holdings (shares) while the word "limited" refers to the responsibility of shareholders which does not exceed the nominal value of the shares subscribed and owned (Widjaja, 2008).

According to Munir Fuady, it can also be interpreted that a Limited Liability Company is an association of shareholders created by law and treated as an artificial person by the court, which is a legal entity and is therefore completely separate from the people who founded it and has the capacity to exist. continuously and as one. legal entities, limited liability companies have the authority to receive, hold and transfer assets, sue or be sued and carry out other powers granted by applicable law (Fuady, 2003).

With the ratification of the Job Creation Law and Government Regulation Number 2021, the definition of PT changed to a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with 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 regarding Micro and Small Enterprises.

Limited Liability Company as a legal entity, the company must follow the procedures for creation and announcement as regulated in Law Number 40 of 2007 concerning Limited Liability Companies, which has been amended in 153A of Law Number 11 of 2020 concerning Job Creation and is further regulated in Government Regulation Number 8 of 2021. Previously in Article 7 paragraph (1) of the Limited Liability Company Law it was emphasized that a Company was established by 2 (two) people or "more" with a notarial deed made in Indonesian. In this definition or requirements there are the main elements: "by two people", "notarial deed" and



"Indonesian language". In the agreement to establish a Limited Liability Company, a notarial deed is required because such a deed is an authentic deed (Isnaeni, 2021).

Notarial Deeds play an important role in creating legal certainty because of their authentic nature and can be used as a strong and complete means of proof if problems arise related to the deed. An authentic deed is seen as a binding and perfect piece of evidence, meaning that what is written in the Limited Liability Company establishment agreement carried out by the founders is stated in a notarial deed called the "Deed of Establishment". This Deed of Establishment basically stipulates that the deed must be trusted for its truth and does not require additional evidence. If what is submitted is not a notarial deed, the application for ratification of the deed of establishment of a limited liability company may be rejected by the Minister of Justice, which will result in the Limited Liability Company not being a legal entity. various kinds of rights and obligations of the founding parties of the company in managing and running the Limited Liability Company (Tumembouw, 2019).

A legal entity is an entity that can act in legal traffic as a legal subject and has assets that are separated from the personal assets of its administrators. A legal entity is a subject that is independent or independent from the founders, members or investors and the legal entity. This entity, like humans, has legal obligations such as paying taxes and applying for permits for business activities in its own name. The philosophy of establishing a legal entity is that upon the death of the founder, the legal entity's assets are expected to continue to benefit other people. Therefore, the law creates a creation of "something" which the law then considers or recognizes as an independent subject, just like a person (naturlijk person). Then, legal science calls that "something" a legal entity (Prasetya, 1995).

Notaries as public officials who have the authority to make authentic deeds in carrying out their duties are based on Law of the Republic of Indonesia Number 30 of 2004 concerning the Position of Notaries which has been amended by Law Number 2 of 2014, Based on Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries states that a Notary is a public official who has the authority to make deeds relating to actions, agreements and decisions which are required by general legislation or the parties concerned to be stated in an authentic letter. , determining the date, keeping the deed and providing the grosse (certified copy), copy and quotation, and all this during the making of the deed is not required of the official or is specifically his obligation.

Furthermore, Article 15 paragraph (1) states that a Notary has the authority to make authentic deeds, as long as the making of these deeds is not assigned or excluded to officials or other people. Thus, the Notary has the authority to make a deed as long as the parties wish or



according to legal regulations it must be made in the form of an authentic deed. The making of the deed must be based on legal regulations relating to procedures for making Notarial deeds, so that the Notary's position as a Public Official no longer needs to be given another title related to the Notary's authority (Tan, 2000).

The role of a Notary regarding assistance in providing legal certainty and legal protection for the community is very important. The role of the Notary is more preventative or preventive of future legal problems by making authentic deeds related to legal status, a person's rights and obligations in law, etc. which function as the most perfect evidence in court, namely in the event of a rights dispute. and their obligations (Isnaeni, 2021).

In establishing a Limited Liability Company, the authority to write down all deeds, agreements and stipulations desired by the parties by law is given to a notary with the aim of consolidating them into an authentic deed so that the deed made has strong evidentiary power, is complete and has validity as a deed. authentic, namely in the form of a deed of establishment of a limited liability company. Notarial Deeds play an important role in creating legal certainty because of their authentic nature and can be used as a strong and complete means of proof if problems arise related to the deed.

Notaries are also required to fulfill all the provisions of the Notary's position and other regulations related to the Deed of Establishment of the Notarial Limited Liability Company. In this case, whether the wishes of the parties do not conflict with the applicable laws and regulations, the Notary in carrying out his office must also be based on Notary Public Position Act. This is done by the Notary as a form of obligation to convey the conditions for authenticity, validity and reasons for the invalidity of a deed, as well as a preventive measure against legal defects in the Notarial Deed which could result in loss of authenticity and invalidation of the Notarial Deed, which could cause harm to the public. especially interested parties (Moerzano & Rustam, 2024).

The Role of Notaries in Establishing Micro and Small Business Companies

The ratification of Law Number 11 of 2020 concerning Job Creation and its implementing regulations Government Regulation Number 8 of 2021 which created Micro and Small Business Companies as new entities in the business world in Indonesia, has demonstrated the seriousness of the Indonesian Government in supporting Micro, Small and Medium Enterprises. Apart from that, it can also be seen in the Government's efforts to penetrate the top 40 (forty) rankings which were previously ranked 73rd in the Ease of Doing Business (EoDB) program. EoDB is a survey conducted by the World Bank, where EoDB consists of 10 (ten) indicators to improve the business climate in 189 countries in the world. EoDB only provides its assessment of the Limited Company (Standardized Company) business form. This means that indirectly, the EoDB policy which is



beneficial for Micro, Small and Medium Enterprises in Indonesia, will only receive positive recognition from the World Bank if the Micro, Small and Medium Enterprises are in the form of a Limited Liability Company.

In this case, those categorized as Micro and Small Enterprises as regulated in Government Regulation Number 7 of 2021 include:

1. Micro Enterprises are:
 - (a) productive businesses owned by individuals and/individual business entities;
 - (b) have a maximum business capital of up to Rp. 1,000,000,000.- (one billion rupiah) excluding land and buildings for business premises or annual sales proceeds up to a maximum of Rp. 2,000,000,000.- (two billion rupiah).
2. Small businesses are:
 - (a) A stand-alone productive economic enterprise established by an individual or business entity that is not a subsidiary of a company or not a branch of a company that is owned, controlled or is a direct or indirect part of a medium or large enterprise;
 - (b) have business capital of more than Rp. 1,000,000,000.- (one billion rupiah) or up to Rp. 5,000,000,000.- (five billion rupiah) does not include land and buildings for business premises or annual sales proceeds up to Rp. 2,000,000,000.- (two billion rupiah) up to Rp. 15,000,000,000.- (fifteen billion rupiah).

The establishment of a Micro and Small Business Company can be established by 1 (one) person, as explained in article 2 of Government Regulation Number 8 of 2021 paragraph 1 b). Micro and small business companies founded by 1 (one) person. With the enactment of the Job Creation Law and Government Regulation Number 8 of 2021, the provisions regarding the requirements for limited liability companies which must be established by 2 (two) or more people do not apply to companies that meet the criteria for State-Owned Enterprises and especially Micro and Small Enterprises. . This means that for State-Owned Enterprises, Limited Liability Companies operating in the capital market and Micro and Small Business Companies can be established by one person.

Different from the conditions for establishing a Limited Liability Company as regulated in the Limited Liability Company Law, which must be established by 2 (two) or more people based on an agreement, the aim is that it can be controlled and controlled by two or more people, and most importantly to carry out the function of "check and balances" in making strategic decisions for Limited Liability Companies. If the requirement of 2 (two) people is not met, it will result in the Limited Liability Company's limited liability becoming unlimited liability. Unlimited liability means that all legal actions and losses of a Limited Liability Company are the personal



responsibility of the founder or shareholder. This condition is of course contrary to the Limited principles that have been in force up to now.

With the establishment permitted by 1 (one) person from these provisions, only individuals can own shares, as stated in Article 111 of the Job Creation Law which adds to the substance of Article 153F of the Limited Liability Company Law which states that:

1. Company Shareholders for Micro and Small Enterprises as referred to in Article 153 A are individuals; And
2. Company founders can only establish 1 (one) Limited Liability Company for Micro and Small Businesses within 1 (one) year.

This provision violates the obligation of a Limited Liability Company to be established by a minimum of 2 (two) people through an agreement. So with the regulation of article 153F of the Job Creation Law and article 2 of Government Regulation Number 8 of 2021, every person can establish a Limited Liability Company alone without having to look for a partner as long as the business they run complies with the criteria for Micro and Small Enterprises. This will result in a Limited Liability Company being established and controlled by just one shareholder, leaving the possibility of fraud committed by the shareholder concerned against a third party by taking advantage of limited liability (General & Editorial, n.d.).

Micro and Small Business Companies in the process of establishing them can be carried out without going through an agreement and notarial deed. This is regulated in Article 111 number 5 of the Job Creation Law which adds the substance of Article 153 A and is further emphasized in article 6 of Government Regulation Number 8 of 2021.

The provisions of article 153A of the Job Creation Law and article 6 of Government Regulation Number 8 of 2021 explain that the establishment of a Micro and Small Enterprise Company does not involve the role of a Notary and only requires making a Statement of Establishment. Article 1 letter (2) Government Regulation Number 8 of 2021 Statement of Establishment is a form for filling in the establishment of an individual Company established by 1 (one) person electronically. Of course, the Statement of Establishment is not categorized as a deed that must be made by a public official or made by interested parties.

Basically, the growth and development of a Limited Liability Company as a legal entity which has the consequence of holding rights and obligations as well as the separation of personal assets from company assets, especially during the establishment process, requires a Notary, especially by today's global society which operates in the business sector. Apart from fulfilling the legal certainty provisions of the Limited Liability Company Law which requires a deed of



establishment to be drawn up by a Notary, the Notary is expected to provide legal protection for the public in running their business.

Notaries as Public Officials are given legal protection by law in order to provide testimony in court, because an authentic deed which is a legal product produced by a Notary is a supporter of the creation of the concept of legal certainty required by the parties, including one of which is the Deed of Establishment of a Limited Liability Company (Aman, 2019). Likewise, all documents related to the PT such as the Articles of Association, Minutes of the General Meeting of Shareholders (GMS) are made and legalized by a Notary.

Establishing a Limited Liability Company only through a statement letter does not guarantee the legality of the documents and the identity of the founder. The legality of a Limited Liability Company will be doubtful and risky because it could commit unlawful acts, and as a consequence, the Limited Liability Company as a legal entity means the legality of the documents and identity of the founders must be accountable. So, in order to guarantee legal certainty and legal protection, a deed of establishment of a Limited Liability Company made by a notary is still necessary to guarantee the legality of the Limited Liability Company, the validity of the documents and the identity of the founders, even though it is only a Limited Liability Company for Micro and Small Businesses.

The legality of a company or business entity is the most important element, because legality is a personal identity that legalizes or validates a business entity. The role of a notary is very necessary to ensure that documents sent electronically to the government are indeed sent by a legitimate party, in order to avoid abuse of authority. In the case of the establishment of a Micro and Small Enterprise Company, there are no physical documents that must be provided to the government, only scans of the documents, and the party who signs the statement cannot be sure that the documents have been signed directly by the party concerned. Thus, not requiring a notarial deed in establishing a Micro and Small Enterprise company will result in not guaranteeing legal certainty.

The authority of a Notary as a public official is regulated in Law Number 30 of 2004 and has been amended by Law Number 2 of 2014 in making authentic deeds, which is actually an important part of the Indonesian state which adheres to the principle of the rule of law by guaranteeing legal certainty, order and legal protection. . The basic idea of the rule of law, both in the concept of "rechtsstaat" and "the rule of law", the main target is the protection of basic human rights. In the rechtsstaat concept, protection of basic rights is realized through the principle of legality. With this principle, the law must be ensured, meaning that the law must be formed consciously and stated in an official and definite form, such as the enactment of Law Number 02



of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notaries (Nasution, 2020).

To clearly determine a person's rights and obligations as a legal subject and ensure legal certainty in various relationships in the economic and social fields including banking, land and other business relationships, the need for written evidence in the form of authentic deeds is very necessary and continues to increase in line with the development of demands at both levels. national, regional and global in addition to notarial deeds will avoid disputes between interested parties. so that it is recognized by society. In other words, the company's legality must be valid according to laws and regulations, where the company is protected or protected by various documents so that it is legal in the eyes of the law of the government in power at that time. The sustainability of a business is influenced by various factors, one of which is the existence of the legality element of the business. In a business, the legality of a company or business entity is the most important element, because legality is a self-identity that legalizes or validates a business entity so that it is recognized by society. The legality of the company must be valid according to laws and regulations, where the company is protected or protected by various documents so that it is legal in the eyes of the law, the environment, and many other permits according to its respective business field.

4. CONCLUSION

The changes in Law Number 11 of 2020 concerning Job Creation can be seen from the fact that micro and small businesses often find it difficult to develop their business if they do not form a legal entity. Meanwhile, upgrading to become a legal entity is very difficult because micro and small businesses are individuals. Therefore, with the existence of Law Number 11 of 2020 concerning Job Creation, it is possible for micro and small businesses founded by individuals to become legal entities with limited liability which provides more legal protection for business actors through a separate mechanism for separating business assets and personal assets. will make it easier for micro and small businesses to gain access to run and develop their businesses.

Holder's liability if an Individual Company suffers a loss, the shareholder is liable to the extent of the shares they include in the individual company unless the shareholder does the things as regulated in article 153 paragraph (2) of the Job Creation Law concerning amendments to the PT law, In relation to these matters, Individual Company shareholders can be burdened with unlimited liability up to the shareholder's personal assets.

Micro and Small Business Individual Companies based on PP number 8 of 2021 in the process of establishing them can be carried out without going through an agreement and notarial



deed, just by making a statement letter. Establishing a PT only through a statement letter does not guarantee the legality of the documents and the identity of the founder. The legality of the PT will be doubtful and risky because it could commit acts against the law, and as a consequence, the PT as a legal entity must be able to account for the legality of the documents and the identity of the founder. Therefore, a deed of PT establishment made by a notary is still needed to guarantee the legality of the PT, the validity of the documents and the identity of the founder, even though it is only a PT for Micro and Small Enterprises. The legality of a company or business entity is the most important element, because legality is a personal identity that legalizes or validates a business entity. The role of a notary is very necessary to ensure that documents sent electronically to the government are indeed sent by a legitimate party, in order to avoid abuse of authority. In the case of the establishment of a Micro and Small Enterprise PT, there are no physical documents that must be provided to the government, only scans of the documents, and the party who signs the statement cannot be sure that the documents have been signed directly by the party concerned. Thus, not requiring a notarial deed in establishing a Micro and Small Enterprise company will result in not guaranteeing legal certainty.

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