

Reformulation of The Regulations Regarding Changes In The Status of Individual Companies To Capital Partnership Companies With Legal Certainty

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ABSTRACT

Indonesia's national economic recovery requires increased competitiveness of business actors, including through the development of regulations for establishing business entities. The Job Creation Law and Government Regulation No. 8 of 2021 introduced the concept of an Individual Limited Liability Company (PT) which allows the establishment of a PT by one person without a notarial deed, for micro and small business actors. However, the change in status of an Individual PT to a capital partnership PT must be carried out with a notarial deed, which creates legal uncertainty and challenges in implementing the regulation. In addition, the lack of socialization and education regarding the regulation of Individual PTs has resulted in low understanding among business actors. This study uses a normative legal method with a statutory, conceptual, and historical approach, as well as an analysis of grammatical and systematic interpretation of primary, secondary, and tertiary legal materials. Through interviews with notaries, this study examines the legal consequences of the deed of change of status of an Individual PT and provides recommendations to clarify future legal norms in changing the status of an individual company to a capital partnership. It is hoped that the research results can support the implementation of more effective individual PT regulations, provide legal certainty for business actors, and strengthen the contribution of MSMEs to national economic growth.

Keywords : Regulation, Change of Status of Sole Proprietorship, Capital Partnership Company

1. INTRODUCTION

Economic recovery has become one of the main agendas in Indonesia, especially after various challenges that have hit the global and national economy in recent years. The government, together with the community and business actors, continue to strive to encourage economic growth through various strategic policies. One focus is to increase the competitiveness of business actors of various scales, from micro, small, and medium enterprises (MSMEs) to large businesses. In this context, simplifying regulations and providing convenience for establishing a business entity are very important aspects.

In Indonesia, the choice of business entity form is regulated in various laws and regulations. Some forms of business entities that are commonly used are Civil Partnership (Maatschap), Firma, CV (Commanditaire Vennootschap), and Limited Liability Company (PT). Of the various forms, PT stands out as the business entity that is most in demand by business actors.



This is inseparable from the characteristics of PT which provides limitations on the liability of capital owners, so that business risks are limited to the capital invested. This is in line with the doctrine of separate legal personality which is the basis for the existence of PT as a legal entity. This doctrine separates the personal wealth of the owner or shareholder from the wealth of the legal entity itself, providing strong legal protection and increasing trust in PT as a form of business entity.

The legal definition of a PT is stated in Article 1 number 1 of the Limited Liability Company Law (UUPT). A PT is defined as a legal entity in the form of a capital association, established based on an agreement, with authorized capital divided into shares. However, since the enactment of the Job Creation Law, the concept of a PT has been expanded through the introduction of an Individual PT. This innovation allows business actors to establish a PT with only one founder, something that was previously not possible under the old regulations that required a minimum of two founders. This is further regulated in Government Regulation No. 8 of 2021, which makes it easier for micro and small business actors to establish an Individual PT.

The introduction of PT Perorangan is a major step in the government's efforts to empower MSMEs. As a legal entity, PT Perorangan provides various benefits, such as easy access to financing, increased business credibility, and better legal protection. The establishment of PT Perorangan no longer requires a notary deed and can be done electronically through the Ministry of Law and Human Rights (Kemenkumham) system. This procedure is designed to reduce the costs and time required in the process of establishing a legal entity, making it more affordable for small business actors.

However, although this regulation provides convenience in the initial stages of establishment, challenges arise at the stage of changing the status of an Individual PT to a regular PT or a capital partnership PT. Based on Article 9 paragraph (2) of PP No. 8 of 2021, this change in status requires the preparation of a notarial deed and electronic re-registration with the Ministry of Law and Human Rights. This provision raises questions because it contradicts the initial principle of establishing an Individual PT which does not require a notarial deed. As a result, there is a lack of legal norms which can create uncertainty for business actors.

Notaries play an important role in the Indonesian legal system, especially in providing legal validity to various agreements and legal documents. Based on Article 15 paragraph (1) of the Notary Law (UUJN), notaries are authorized to make authentic deeds that provide perfect evidentiary power for the parties involved. In the context of changing the status of an Individual



PT, the notary is the party responsible for ensuring that the process is in accordance with applicable legal provisions. However, current regulations do not provide clear guidance on how the role of a notary should be carried out in this process. This creates a legal loophole that can lead to different interpretations among legal practitioners.

In addition, another obstacle faced is the lack of socialization and education regarding the regulation of PT Perorangan. Although this regulation has been in effect since 2021, many business actors do not fully understand the procedures for establishing, changing status, or the benefits they can obtain from this form of business entity. The lack of publication and training regarding PT Perorangan causes many business actors to hesitate or even be reluctant to use this form of business entity. In fact, with wider implementation, PT Perorangan has great potential to support the development of MSMEs in Indonesia.

This study was conducted to examine more deeply the legal consequences of the deed of change of status of PT Perorangan made by a notary. This study also aims to provide recommendations for clearer legal norms to overcome the ambiguity in the related regulations. In this context, it is important to evaluate the extent to which the PT Perorangan regulation can be implemented effectively and how the role of the notary can be optimized in supporting the implementation of this regulation.

Through a comprehensive approach, this study is expected to provide real contributions in improving the implementation of PT Perorangan regulations. In addition, this study also aims to provide better solutions in supporting MSME actors to be able to utilize their legal entity status more optimally. Thus, PT Perorangan is not only a simple and efficient form of legal entity, but also provides adequate legal certainty for business actors in Indonesia. The successful implementation of PT Perorangan is expected to be an important milestone in the development of the national economy, while strengthening the position of MSMEs as the main pillar of the Indonesian economy.

2. RESEARCH METHOD

The research method uses a normative legal method. The approach used in this study is the approach used by the author in writing this research, namely the statute approach, the conceptual approach and the historical approach. This study uses three types of legal materials, namely primary, secondary and tertiary legal materials. Primary legal materials are the main sources of law that are binding, such as the 1945 Constitution of the Republic of Indonesia, the Civil Code, and



other regulations such as the Notary Law, the Job Creation Law, and its implementing regulations. Secondary legal materials include literature, legal journals, scientific works, and interviews with notaries that provide additional explanations to support primary legal materials. Meanwhile, tertiary legal materials include relevant dictionaries and encyclopedias to complement the understanding of primary and secondary legal materials. The researcher uses the Legal Material Analysis Technique of the grammatical and systematic interpretation method as an analysis technique. Grammatical interpretation aims to understand the meaning of words in the law according to grammatical rules, while systematic interpretation sees the law as an interrelated system that does not stand alone.

3. RESULTS AND DISCUSSION

Legal Consequences of the Deed of Change of Status of a Company to a Capital Partnership Company Made by a Notary

a. The consequences of a deed that does not meet formal and material requirements and its impact on the parties

Notaries are authorized to have deeds made by or before them authenticity of the deed. The authenticity of a deed made by a Notary can only be realized in the deed if it has met the criteria stipulated in the legislation, one of which concerns formal requirements or form requirements (*gebruik in de vorm*) as stipulated in the legislation. An authentic deed according to Article 1868 of the Civil Code reads: "a deed in a form stipulated by law, made before a public official who has the authority for that purpose, at the place where the deed was made". An authentic deed is perfect evidence of what is contained therein (*volleding bewijs*). Article 1870 of the Civil Code reads: "if one party submits an authentic deed, the judge must assume that what is written in the deed has happened"

In accordance with the laws and regulations, it means that the authentic deed made must be the same and must not conflict with the applicable laws, both those stated in the Notary Law and in other laws and regulations. Compliance with Article 38 of the UUJN-P concerning the form and nature of the deed is crucial for a Notary. Deeds that do not meet these requirements risk legal sanctions. However, Notaries are also human beings who may make mistakes in carrying out their duties.

The formal and material requirements for the deed are explained as follows:

a) Formal Requirements

Formal requirements relate to the procedures for making a deed as regulated in Article 38 UUJN-P and legal doctrine. According to Subekti in his book on formal requirements, it is explained as follows:

- Authentic clause (notation of the deed as "authentic" by the Notary).
- Signatures of the Notary and the parties (Article 38 paragraph 2 UUJN-P).
- Use of Indonesian or official translation (Article 38 paragraph 3).

If one of these formal requirements is not met, then the legal status of the deed becomes questionable. Theoretically, there are gradations of legal consequences depending on the severity of the violation:

- (1) Void by law (nietig) if it violates essential elements such as the absence of a Notary's signature. Because a deed without a Notary's signature automatically loses its authentic nature and is only considered a deed under hand with weaker evidentiary power.
- (2) Can be canceled (voidable) if the procedural defect does not touch the essentials, such as a mistake in writing the date or place. This is in line with Supreme Court Decision No. 1021K/Pdt/2019 which states that administrative errors do not necessarily cancel a deed as long as they do not harm the interested parties.

b. Validity of Establishment of a Sole Proprietorship Without a Notarial Deed

The characteristics of a Sole Proprietorship are that it is sufficient to fill out a statement in Indonesian and does not require a deed of establishment by a Notary. Indonesia can be said to be a country that has only recently regulated Sole Proprietorships with one shareholder after the Job Creation Law, while China has already known the term single shareholder with the term One Person Limited Liability Companies.

Viewed from the doctrine of legal entities, according to Riduan Sjahrani there are elements of legal entities that have been recognized, namely the existence of separate assets, certain intentions and purposes, the existence of self-interest, and an orderly organization. The legal entity is a body (association and so on) which in law is recognized as a legal subject (company, foundation, institution and so on). According to Prof. Wirjono Prodjodikoro, a legal entity is a body which in addition to individuals is also considered to be able to act in law and which has rights, obligations and legal relations to other people or bodies.

The many interpretations among experts regarding the definition of a sole proprietorship in the Job Creation Law are that they consider that the redefinition of Article 1 of the Limited Liability Company Law is considered overlapping with the addition of one point letter e in Article 7 paragraph (7). However, the existence of regulations regarding sole proprietorships means that Indonesia has legalized an MSME to be able to register as a Limited Liability Company.

The written statement and participation in shares in the sole proprietorship should also have valid legal force, not just made independently by the founder. This is important to prevent mistakes that may be made by the founder, which can impact the validity of the sole proprietorship or its legal status. Therefore, in order to avoid legal loopholes in the future, these documents should be made before a notary as a public official representing the state. The presence of a notary can also act as an initial step in providing legal understanding to prospective founders of sole proprietorships. Losing authentic status also opens up opportunities for opposing parties to doubt or even reject the contents of the deed. If the deed is used as the basis for important transactions such as buying and selling land, then the process of transferring land rights becomes problematic and can be canceled. This will create legal uncertainty that is detrimental not only to the parties who made the deed, but also to third parties who may have purchased in good faith.

c. The Position of Notarial Deeds as Evidence in Court.

Gustav Radbruch stated that legal certainty can only be achieved if the law is posited, that is, formulated and officially recognized in legislation. According to him, "legal certainty demands positivity," but positive law remains valid without considering aspects of justice or fairness. Thus, posited law provides a clear and predictable basis for every legal action, while avoiding uncertainty.

The principle of legal certainty is fundamental in a state of law. Its essence is to provide certainty through clear, unambiguous, announced legal norms that can be understood by legal subjects. Legal certainty includes restrictions on rights regulated by law, stable rules, consistency in legal interpretation, and clarity regarding the division of authority and procedures for its enforcement. This principle protects legal subjects from state arbitrariness and limits the use of excessive discretion by state officials.

In the context of changing the status of a company, the role of a Notary as a public official as regulated in Article 1868 of the Civil Code and Law Number 2 of 2014 becomes

important. Notaries are given the authority to make authentic deeds that have perfect evidentiary force. However, the provisions in Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital show inconsistencies. Articles 6 and 12 do not require the role of a Notary in the establishment or dissolution of a company, while Article 9 paragraph (2) requires the involvement of a Notary in changing status without explaining the form and function of such authority in detail. This inconsistency creates legal uncertainty, contrary to the principles emphasized by Radbruch.

By understanding the importance of the principle of legal certainty, the regulation regarding the authority of Notaries in changing the status of a company needs to be clarified. This includes the standard or format of the deed, the duties of Notaries in changing the status, and their involvement in assessing the legal feasibility of the initial establishment documents. This clarity will ensure that the role of Notaries supports legal certainty, in accordance with the idea emphasized by Gustav Radbruch.

Future Legal Norms Regarding Changes in the Status of Individual Companies to Capital Partnership Companies

a. The Authority of a Notary in Making a Deed of Change of Status from a Sole Proprietorship to a Capital Partnership Company

The opportunity to establish a Sole Proprietorship presented by the government through the Job Creation Law is a strategic step to expand access for Micro, Small, and Medium Enterprises (MSMEs). This policy is intended to provide convenience in doing business, especially for business actors at the micro and small levels, without having to face complex administrative obstacles such as in establishing a traditional Limited Liability Company (PT). The establishment mechanism that only requires an electronic statement letter through the official website of the Ministry of Law and Human Rights provides high flexibility and efficiency for business actors.

However, there are major challenges in implementing this concept. The Job Creation Law does not provide an explicit definition of a Sole Proprietorship, but instead tries to combine the concepts of a Limited Liability Company and a sole proprietorship. A Limited Liability Company is known to have a formal structure and strong legality as a legal entity separate from its owner. In contrast, a sole proprietorship is simple, with full responsibility lying with the owner. The integration of these two concepts results in inconsistencies, especially in terms of legal responsibility, management, and administrative procedures.

One aspect that is highlighted is the role of the notary. In the establishment of a traditional PT, the notary has a central role as a public official tasked with preparing the deed of establishment, providing legal counseling, and ensuring legal certainty for the parties involved. The deed of establishment is an authentic document that has perfect legal force, functioning as evidence in court if a dispute occurs. However, in the establishment of a Sole Proprietorship, the involvement of the notary is eliminated. This has the potential to weaken the legality of the document and the validity of the founder's identity, because the statement of establishment does not have the same legal protection guarantee as an authentic deed.

In conclusion, the Job Creation Law and its implementing regulations seek to create a more inclusive and small business-friendly business ecosystem. Although innovative, this policy faces significant challenges, especially in terms of regulatory clarity, integration of business concepts, and the role of notaries. Joint efforts are needed to improve the regulations so that this policy can run effectively, support the growth of MSMEs, and at the same time maintain legal certainty in Indonesia.

b. Legal Applicability of Change of Status of Sole Proprietorship to Capital Partnership Company

Hans Kelsen, a prominent legal expert, introduced the concept that the validity of law must be seen in certain environments that indicate the scope of legal norms. In his theory, there are four environments of legal validity, namely:

- 1) Applicability according to time (sphere of time): The law applies within a certain period of time determined by the legislator.
- 2) Applicability according to space (sphere of space): The law applies in a certain geographical area, such as within the jurisdiction of a particular country or region.
- 3) Applicability according to person (personal sphere): The law applies to certain subjects, for example citizens, legal entities, or certain individuals.
- 4) Applicability according to material (material sphere): The law applies to certain things or materials, which are relevant to the purpose or subject of the regulation of the norm.

However, sole proprietorships have limitations in terms of business scale. If the company grows beyond the criteria of micro and small businesses or has more than one shareholder, then the law requires a change in the legal entity status to a capital partnership company such as a Limited Liability Company (PT).



In legal theory, legal entities are often understood through the legal fiction approach introduced by Carl von Savigny. This theory states that a legal entity is an entity created by law for a specific purpose. With the status of legal fiction, a sole proprietorship is given rights and obligations that allow the entity to act as a legal subject.

In the context of a sole proprietorship, formal recognition from the state through the registration process is the main requirement for the existence of this legal entity. Without formal registration, the entity has no legal validity and cannot exercise legal rights as a legal entity. Therefore, the legal status of a sole proprietorship is highly dependent on the recognition and compliance with applicable legal regulations.

When a sole proprietorship no longer meets the criteria as a micro and small business or has more than one shareholder, its legal status must be changed to a capital partnership. This obligation to change status has several main objectives:

Before systematically discussing the process of changing the status of a legal entity from a sole proprietorship to a capital partnership, it is important to understand the definition and characteristics of a capital partnership as a conceptual basis. Based on Article 2 paragraph (2) of the Regulation of the Minister of Law and Human Rights No. 21/2021, a capital partnership is a legal entity established on the basis of an agreement, a principle that is also reflected in Law Number 40 of 2007 concerning Limited Liability Companies. In practice, the establishment of a limited liability company must be carried out by at least two founders, indicating that a capital partnership cannot be established by one party alone, unlike a sole proprietorship. Legal developments in Indonesia have also introduced a new type of company for micro and small businesses, which still require a minimum of two founders but have adjusted capital requirements based on Government Regulations No. 8/2021 and No. 7/2021. Theoretically, referring to Hans Kelsen's view, there is a difference between law as a norm that should be implemented (*das sollen*) and law as a social fact that operates in society (*das sein*).

In addition, another notary explained that the deed of change of status from a sole proprietorship to a capital partnership is usually stated in a deed of Shareholders' Decision Statement (PKPS). This document is the minutes of the shareholders' meeting that decides on the change of company status, including the acceptance of new shareholders and adjustments to the company's articles of association, which is made before a notary. The function of this PKPS deed is to protect the notary from the risk of violating the rules and

falsifying the contents of the document, so the making of this deed must be done carefully. The PKPS deed is a deed that contains a description of the wishes of the shareholders which are officially stated in a circular decision.

Overall, this study reveals a gap between regulations and practices in changing the legal status of a company from a sole proprietorship to a capital partnership, as well as the need to improve regulations so that this process runs more effectively and in accordance with legal provisions.

4. CONCLUSION

Research shows that in the process of changing status from a sole proprietorship to a capital partnership, although the establishment and dissolution of a sole proprietorship does not require a notarial deed, the change in status must be carried out through a notarial deed. The legal consequences of the deed of change of status made by a Notary are that it fulfills the formal requirements to create a new status as a capital partnership and binds the parties. The deed of change of status that can be used by a Notary is the Statement of Decision of Shareholders of a Individual Company. The Notary bears full responsibility for the deed he makes and may be subject to civil or criminal charges if there is an error or negligence that is detrimental to another party.

There is legal uncertainty regarding the procedures and types of deeds used by notaries in making changes to the company's status. In terms of authority, notaries have attributive authority to make a deed of change of status based on the provisions of Article 9 paragraph (2) of Government Regulation No. 8 of 2021 and Article 17 paragraph (2) of the Regulation of the Minister of Law and Human Rights No. 21 of 2021, which regulates the registration of the establishment, changes, and dissolution of companies that meet the criteria of micro and small businesses.

REFERENCES

- Abbas, D. The Influence of Business Capital, Market Orientation, and Entrepreneurial Orientation on the Performance of SMEs in Makassar City. *Minds Journal: Idea and Inspiration Management* 5, no. 1 (2018).
- Adjie, Habib. *Indonesian Notary Law (Thematic Interpretation of Law No. 30 of 2004 Concerning the Position of Notary)*. Bandung: Refika Aditama, 2014.
- . *Civil & Administrative Sanctions Against Notaries as Public Officials*. Surabaya: PT Refika Aditama, 2007.



- Adjie, Habib, and Sjaifurahman. Aspects of Notary Accountability in Making Deeds. Bandung: CV Mandar Maju, 2011.
- Adichandra, Muhammad Boma. "Notary's Authority Regarding the Establishment of Individual Limited Liability Companies Based on UUJN and PP Number 8 of 2021." *Jurnal Sains Student Research* 2, no. 6: 5.
- Badruzaman, Mariam Darus. Various Business Laws. 2004.
- Budiharjo, Miriam. Basics of Political Science. Jakarta: Gramedia Pustaka Utama, 1998.
- Chatamarrasjid. Penetration of the Corporate Veil and Actual Issues of Corporate Law. Bandung: PT Citra Aditya Bakti, 2004.
- Crabbe, VCRAC Legislative Drafting. London: Cavendish Publishing Limited, 1993.
- Efendie Lotulung, Paulus. Collection of Papers on General Principles of Good Governance. Bandung: Citra Aditya Bakti, 1994.
- Efensi, A'an, and Dyah Ochtorina Susanti. "The Meaning and Problems of Using the Terms 'And', 'Or', 'And/Or', 'Except', and 'Besides' in the Law." *Indonesian Legislation* 7, no. 4 (2020): 399.
- Gloria, M. "Bankruptcy of Individual Companies in the Job Creation Law." *Jurnal Panorama Hukum* 6, no. 1 (2021): 24–31.
- Hadjon, Philipus M. Introduction to Indonesian Administrative Law. Yogyakarta: Gadjah Mada University Press, 2005.
- Harahap, M. Yahya. Limited Liability Company Law. Jakarta: Sinar Grafika, 2009.
- Hasanudin Hidayat, Maulana. "Separate Legal Entity and the Responsibilities of Directors in Company Management." *National Journal of Law* 1, no. 1 (2019): 68.
- Ibrahim, Johnny. Normative Legal Research Theory and Methods. Malang: Bayumedia, 2012.
- Isnaeni, D. "The Role of Notaries in the Establishment of Micro and Small Enterprises." *Journal of Law and Notary* 5, no. 2 (2021): 208.
- Jaya, F. "Potential Conflict of Interest in the Establishment of Individual Legal Entities after the Revision of the Limited Liability Company Law in the Omnibus Law." *Kosmik Hukum* 21, no. 2 (2021): 115–123.
- Kansil, Cst., Christine ST Kansil, Engeli R. Palandeng, and Godlieb N. Mamahit. Dictionary of Legal Terms. Jakarta: Alumni, 2009.
- Kelsen, Hans. General Theory of Law and State. Translated by Anders Wedberg. New York: Russell & Russell, 1961.

Ramli, H., and Supriyanto. *The Concept of Legal Entity in Indonesian Law*. Yogyakarta: Gadjah Mada University Press, 2018.

Reynaldi, Fajar Rafiqi. "The Authority of Notaries in the Establishment of Individual Companies Based on Law Number 11 of 2020 concerning Job Creation." *Jurnal Officium Notarium* 1, no. 2 (August 2021): 357.

Riantoputra, Ignatius. *Notary: Responsibilities and Professional Ethics*. Yogyakarta: Deepublish, 2020.

Robbins, Ira P. "'And/Or' and the Proper Use of Legal Language." *Maryland Law Review* 77, no. 2: 131.

Corporate Law. Padang: CV Gita Lentera, 2023.

Sadijono. *Understanding Several Basic Chapters of Administrative Law*. Yogyakarta: Laksbang Pressindo, 2008.

Sahidu, Imran, and Syamsul Hadi. *Legal Protection for Micro, Small and Medium Enterprises*. Makassar: Cendikia, 2015.

Salim, HS *Development of Theory in Legal Science*. Jakarta: Rajawali Press, 2nd edition, 2012.