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Sole Proprietorship Legal Entity in Establishment of Small Medium Business in Indonesia

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ABSTRACT

In order to make it easier for the public to establish a company, the Government recently rolled out the concept of a sole proprietorship through a derivative of Law Number 11 of 2020 concerning Job Creation, which is nothing new for several countries in the world. This concept has been known in various countries, but with different names. The United States, Canada and Singapore call a sole proprietorship a sole proprietorship, while in the UK it is called a Sole Trader. In Vietnam it is known as Private Enterprise, and in the Netherlands it is known as Eenmanszaak. The concept of a sole proprietorship has various advantages, as regulated in Government Regulation Number 8 of 2021 concerning Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses. The Job Creation Law changes the ratification regime to a registration regime, including for this sole proprietorship. These are the legal facts found by the author who have concepts that are relevant to the development of Legal Studies in reviewing sole proprietorship.

Keywords: Limited Company, Sole Proprietorship, Legal Entity.

I. INTRODUCTION

The government has issued a new regulation regarding the form of a new legal entity, namely a sole proprietorship with limited liability [1]. Unlike the company in general, the entity can be established by only one person and does not require a notarial deed. A sole proprietorship is the simplest business organization. One person runs, is responsible for and has complete control over the operations and profits of the business. It has no formal legal entity. Also known as sole proprietorship, sole trader [2].

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 and authorized capital which is entirely divided into shares and fulfills the requirements stipulated

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in this law and its implementing regulations. Likewise, with a Limited Liability Company that has just been established or has just been "born", then as an "artificial person" or "person in law" which is a "person" in the legal sense, it is necessary to have a Deed of Establishment drawn up by a Notary. In the law of proof, an authentic deed is seen as a binding and perfect evidence. So that the role of a notary is very necessary to ensure that documents sent electronically to the government are indeed sent by legitimate parties in order to avoid misuse. This regulation regarding Limited Liability Companies continues to develop and undergoes several changes in Article 1 number 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law) as amended by Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as Employment Copyright Act) which explains that Limited Company is a legal entity which is a capital alliance, 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 stipulated in the Laws and Regulations. invitation regarding Micro and Small Enterprises.

In the case of sole proprietorship, previously no regulation was found in either the Commercial Code or other laws and regulations. Meanwhile, the legal form of Limited Company is a form of legal entity that is quite popular for business actors to use.

The existence of a proposal regarding a private company has positive potential in order to improve the ranking of ease of doing business in Indonesia. Perceptions about establishing a Limited Company that are expensive can be erased if the individual Limited Company model is present. For example, in a number of countries the Sole Proprietorship model has been regulated in several countries such as in the EU and UK with the term Single Member Company, Dirian Berhard in Malaysia, Private Enterprise in Vietnam, and Private Limited Company in Singapore.

Based on this, regulations regarding Sole Proprietorship were promulgated, but there is still legal ambiguity in this case according to the author due to the differences between sole proprietorship in Indonesia and the forms of sole proprietorships in other countries mentioned above, as well as the public's lack of understanding of the new regulations regarding the advantages and disadvantages of the existence of an individual Limited Company referred to by the laws and regulations in Indonesia.

(A) Literature Review

Sole proprietorship as regulated in this Job Creation Act have several differences from Limited

Company which are known in the Law on Limited Liability Companies [3], in addition to changes in Article 1 number 1 regarding the definition of Limited Company, there are several facilities provided by the government to Sole proprietorship, one of which is regarding procedures. the establishment of a Limited Liability Company, as regulated in Article 7 of the Limited Liability Company Law, which originally had to be established by 2 (two) or more persons with a notarial deed in Indonesian, does not apply to sole proprietorship. The establishment of an sole proprietorship is carried out based on article 153A number 3 of the Job Creation Act, because in this latest regulation establishing a Limited Company can be carried out by 1 (one) person and can be established based on a statement of establishment made in the Indonesian language so that it does not require a notary deed.

Sole proprietorship in terms of establishment, change and dissolution no longer require a notarial deed, as for other differences, namely regarding shareholders in sole proprietorship that are different from shareholders in Limited Company as regulated in the Limited Liability Company Law which can be in the form of individual legal subjects or legal entities, in the Company. Individuals who can become shareholders/owners are only individuals

(B) Research Methodology

This study uses a normative juridical approach [4], where the author focuses on the legal approach. The statute approach is carried out by reviewing all laws and regulations related to the legal issues being handled. For research for practical activities, this legal approach will open up opportunities for researchers to study whether there is consistency and conformity between one law and other laws or between regulations and laws [5] In this study, a discussion is carried out using the provisions of national laws and regulations, and regulations from other countries related to Individual Limited Liability Companies and Sole proprietorship.

The legal materials used in this research come from relevant national and international legislation. This research will focus on reviewing the laws and regulations in the corporate sector, such as Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 11 of 2020 concerning Job Creation, Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises, Law no. 20 of 2008 concerning Micro, Small and Medium Enterprises, as well as the Decree of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Requirements and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities.

The author analyses interpretively in this study, by explaining the basic notions of legal society

and legal subjects. The legal community is a society as a system of regular relations with the law itself. What is meant by law itself is the law created in, by, and for the system of legal relations itself. The relationship may have an abstract (relation) or concrete (communication) meaning.

II. RESEARCH RESULTS

Position of Sole Proprietorship in A Legal Entity in Indonesia

According to the Big Indonesian Dictionary (KBBI), a business entity is a group of people and capital who have activities engaged in trade or the business world/company. The following are the characteristics of business entities, whether they are legal entities or not:

First, Business Entity in the Form of a Legal Entity; The characteristic of a legal entity is the separation of the owner's wealth from the assets of the business entity, so that the owner is only responsible for the assets he owns. Business entities in the form of legal entities consist of:

a. Limited Liability Company (LLC)

The term Limited Liability Company (LLC) used today was formerly known as Naamloze Vennootschap (NV). The term has become standard in society and in various laws and regulations, for example Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 8 of 1995 concerning Capital Market [6]

Limited Liability Company consists of two words, namely Company and Limited. The company refers to the capital of LLC which consists of holdings or shares. Meanwhile, the word Limited refers to the responsibility of shareholders whose extent is only limited to the nominal value of the shares they own. A limited liability company is a company incorporated and legalized by law. A limited liability company with a legal entity certainly has rights and obligations that must be fulfilled in order to avoid legal sanctions which can also apply if there are acts that are against the law [6]

Harahap explained that a LLC must meet the following requirements [7]

- 1) is a capital partnership;
- 2) established by agreement;
- 3) carry out business activities;
- 4) the birth of the company through a legal process in the form of government approval.

Because LLC is a capital partnership, the shareholders are only responsible for the shares they own and do not include their personal assets [8]

Regarding the authorized capital, the amount is determined based on the decision of the founders of LLC [9] The authorized capital of the LLC must be issued and fully paid up at least 25% as evidenced by a valid proof of deposit [10]

b. Foundation

Foundation is a legal entity consisting of assets that are separated and intended to achieve certain goals in the social, religious and humanitarian fields that do not have members [11] Foundations can carry out business activities to support the achievement of its goals and objectives by establishing a business entity and/or participating in a business entity [12]

c. Cooperative

Cooperative is a business entity consisting of individuals or cooperative legal entities based on their activities based on cooperative principles as well as a people's economic movement based on the principle of kinship [13]

d. Sole Proprietorship

To meet the community's need for this, the government makes regulations regarding Private Limited Liability Companies which are regulated in Law Number 11 of 2020 concerning Job Creation, hereinafter referred to in this study as UUCK. The definition of a Limited Liability Company in Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies, hereinafter referred to as LLC Law, expanded in the Job Creation Law to become 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 authorized capital which are 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 Enterprises [14] The type of sole proprietorship is a type of commercial business entity or company that is indeed owned by an entrepreneur. Usually, this individual business comes on a large scale and small scale, an example of a small-scale individual business is an SME to a large company.

Second, Business Entity Not in the Form of a Legal Entity; Then the characteristic of a business entity that is not a legal entity is that there is no separation between the assets of the business entity and the assets of its owner. Business entities that are not in the form of legal entities consist of:

a. Civil Guild

A civil partnership (maatschap) is an agreement in which two or more people bind themselves

to enter something into the partnership with the intention of sharing the profits that occur because of it [15]

Since a civil partnership is a business entity not a legal entity, the partners are personally responsible according to their own agreement or in accordance with the provisions of the law [16]

b. Firm

Firma is a company established to conduct a business under one common name [17] The members have several responsibilities to the firm [18]

c. Limited Partnership

Limited Partnership consists of active partners and passive/limited partners [19] Active partners are responsible for personal assets [16] while passive partners are only responsible for the capital that has been deposited into the Limited Partnership [20]

d. Trading Business (TB)

Trading business is a business entity that is run independently by one person only and does not require a partner in doing business. If someone helps the business, their position is not the same as the owner of TB, but only acts as an employee or subordinate [21]. In addition, in the eyes of the law, TB is the same as its owner, meaning that there is no separation of wealth or separation of responsibilities between TB and its owner [21]

e. SMEs in the legislation.

Basically, SMEs stands for Small and Medium Enterprises. The term SME is often used to describe small and medium-sized business units. Meanwhile, MSMEs or Micro, Small, and Medium Enterprises often focus on the coverage of micro business units.

Both have different definitions according to various literatures. However, most of the literature and government regulations more often use the term MSME because it is considered more representative of the three business units that cover it. Various regulations also place more emphasis on explaining the differences between the three business units, namely the micro business unit, the small business unit, and the medium business unit. In terms of coaching and empowerment, the three business units are managed by different parties.

According to Law Number 23 of 2014 concerning Regional Government, micro business units are fostered by districts and cities, small businesses are managed by the province, while medium-sized businesses are on a national scale. From a formal juridical perspective, micro-enterprises are relatively not legally incorporated, while small and medium-sized enterprises

are required to have a legal basis. In this case, the Central Statistics Agency defines MSMEs based on the quantity of labor. The World Bank international institution classifies MSMEs based on employee conditions, income, and asset value.

Government Regulation No. 7 of 2021 concerning the Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises has been issued by the government along with 48 other implementing regulations from Law no. 11 of 2020 concerning Job Creation on 16 February 2021. The PP UMKM changed several provisions that had previously been regulated in Law no. 20 of 2008 concerning Micro, Small and Medium Enterprises. One of them is the rules related to the criteria for SMEs themselves.

Capital in PT is capital whose amount can be determined according to the agreement of the parties, the size of a PT can be qualified based on the amount of capital it includes, regarding Individual Companies based on Article 35 point 3 of Government Regulation Number 7 of 2021 concerning Ease, Protection and Empowerment of Cooperatives and Businesses Micro, Small and Medium Enterprises that regulate business capital, namely:

- 1) Micro-enterprises have a business capital of up to a maximum of Rp. 1,000,000,000,- (one billion rupiah)
- 2) Small businesses have a business capital of more than Rp. 1,000,000,000, - (one billion rupiah) up to a maximum of Rp. 5,000,000,000,- (five billion rupiahs) excluding land and business buildings; and
- 3) Medium-sized businesses have a business capital of more than Rp. 5,000,000,000,- (five billion rupiah) up to a maximum of Rp. 10,000,000,- (ten billion rupiah) excluding land and buildings.

The nominal value of the above criteria can be changed in accordance with economic developments. In addition to the criteria for working capital and annual sales results, ministries/state institutions may use other criteria such as turnover, net worth, investment value, number of workers, incentives and disincentives, local content, and/or application of environmentally friendly technology in accordance with the criteria for each business sector. for certain purposes [22]

Based on the legislation, MSMEs in carrying out their business empowerment activities are based on the following principles [23]

- 1) The principle of kinship, namely the principle that underlies efforts to empower MSMEs as part of the national economy which is carried out on the basis of economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental

insight, independence, balance, progress, and national economic unity for the welfare of all people. Indonesia.

- 2) The principle of economic democracy, namely the empowerment of MSMEs is carried out as a unit of national economic development to realize the prosperity of the people.
- 3) The principle of togetherness, namely the principle that encourages the role of all MSMEs and the business world together in their activities to realize the welfare of the people.
- 4) The principle of equitable efficiency, namely the principle that underlies the implementation of MSME empowerment by prioritizing fair efficiency in an effort to create a fair, conducive and competitive business climate.
- 5) The principle of sustainability, namely the principle that in a planned manner strives for the development process to run through the empowerment of MSMEs which is carried out on an ongoing basis so as to form a strong and independent MSME Development Strategy and Policy economy.
- 6) The principle of environmental insight, namely the principle of empowering MSMEs which is carried out while still paying attention to and prioritizing the protection and maintenance of the environment.
- 7) The principle of independence, namely the principle of empowering MSMEs which is carried out while maintaining and prioritizing the potential, capabilities, and independence of MSMEs.
- 8) The principle of balance of progress, is the principle of empowering MSMEs that seek to maintain a balance of regional economic progress within the national economic unity.
- 9) The principle of national economic unity is the principle of empowering MSMEs which are part of the development of the national economic unity

Still based on the same legislation, the principles of empowerment include [23]

- 1) The principle of growing independence, togetherness, and entrepreneurship of SMEs to work on their own initiative
- 2) Realizing transparent, accountable and fair public policies
- 3) Business development based on regional potential and market-oriented in accordance with the competence of MSMEs
- 4) Increasing the competitiveness of SMEs
- 5) Implementation of integrated planning, implementation, and control.

Legal Entity Individual Company in Small Medium Business Establishment in Indonesia

MSMEs have many advantages in optimizing the utilization of national resources. However,

its development is still constrained by various classical problems. One of them is the difficulty in obtaining the legality or formality of the business. What is meant by the formalization of MSMEs is the granting of permits for certain business activities and legal entity status for MSMEs in accordance with the provisions of the prevailing laws and regulations. The formalization of MSMEs is divided into two forms, namely:

- a. Company formalization is the ratification of the legal entity form of the company concerned. For example, Trading Business (UD), individual company (CV), joint venture company (Firma), Limited Liability Company (PT), Persero company and others;
- b. Business activity permits issued by sectoral agencies/institutions. For example, Business Permits Establishment (SIUP), mining permits, environmental permits, route permits and others. The ratification of a company's legal entity is under the authority of the Ministry of Law and Human Rights (HAM) which is delegated to a Notary. Therefore, the costs are relatively large for the size of micro and small businesses. Anticipating this is the need for legal policies that are able to guarantee and protect them so that they can compete in the midst of global economic liberalization. [24]

The limited time that some people have is the main obstacle in managing the complexity of licensing in starting a business. So many types of micro-enterprises (SMEs) that are run by the community are not in the form of a business entity. Unfortunately, not many people know that running a business in the form of an entity is more profitable than the type of business that does not form a business entity at all.

In addition, not many people understand that there are many great potentials and opportunities that can be achieved by running a business entity in the form of a LLC (Limited Company) rather than a CV (*Commanditer Vennotschap*), especially for SMEs and Startups who want to expand their business and expand their scale. his business. Ignorance of the great potential that can be empowered makes people prefer the form of a business entity in the form of a CV rather than forming a LLC.

LLC as a legal entity has basic characteristics, namely the existence of limited liability and the separation of assets from their owners/shareholders. This is the most basic legal consequence in a LLC as a legal entity is the separation of assets. LLC capital originating from shareholders is wealth that has been separated from the personal wealth of shareholders, with the separation of assets, all assets owned by LLC do not belong to shareholders anymore, but become the assets of LLC.

Sole proprietorship is an entrepreneur who owns his own sole proprietorship. Everyone can

create individual business entities that are created without permission and without any special procedures. In addition, almost everyone also has the freedom to be able to develop in running their business without any coercion related to capital restrictions to set up their business [25]

Meanwhile, each sole proprietorship is usually only owned by one owner. The liability of the owner is unlimited. The characteristics of a sole proprietorship are:

- a. The business is owned by an individual.
- b. The form of management is very simple
- c. The capital issued is relatively small
- d. Business continuity depends on the owner himself
- e. Sales value and also the added value produced is relatively smaller.

The government through the Minister of Law and Human Rights Regulation Number 21 of 2021 explains the requirements and procedures for registering the establishment, amendment and dissolution of a Limited Liability Company Legal Entity as follows:

First, Requirements for the establishment of an individual company:

- a. Limited Liability Company referred to as Persero is a legal entity established in accordance with the criteria for micro and small businesses.
- b. Make a statement of establishment in accordance with the format contained in the attachment of PP No. 8 of 2021 PP on UMK Capital.
- c. An individual company is established by only 1 person.
- d. Individual companies are required to have authorized and paid-up capital. Just like a Limited Liability Company, the paid-up capital is a minimum of 25% of the authorized capital as evidenced by a valid proof of deposit.
- e. An individual company is established by an Indonesian citizen by filling out a statement of establishment in Indonesian
- f. The Indonesian citizen referred to must meet the requirements, namely: must be at least 17 years old and legally competent [26]

Second, The Establishment Process of an Sole Proprietorship:

- a. Founded by 1 person (including shareholders and directors, no commissioners)
- b. Having micro and small business activities
- c. The founder makes a statement of establishment
- d. Electronic registration of individual companies through the Minister of Law and Human Rights of the Republic of Indonesia
- e. Taking care of individual company TIN

f. Manage NIB and individual company business license

Third, Requirements for the establishment of an individual company:

- a. Founder's ID card
- b. Founder's NPWP
- c. Address of an individual company (if the address is in Jakarta, then it must meet the zoning requirements in accordance with the Regional Regulation of the Special Capital Region of Jakarta Number 1 of 2014 concerning Detailed Spatial Planning and Zoning Regulations
- d. Statement of Incorporation of Individual Company
- e. The Statement of Establishment of the individual company is registered electronically to the Minister. The format for the statement of establishment of a limited liability company is as follows:
 - 1) The name and domicile of the individual Company;
 - 2) The period of establishment of an individual company;
 - 3) The aims and objectives as well as the business activities of the individual Company;
 - 4) Total authorized capital, issued capital, and paid-up capital;
 - 5) Nominal value and number of shares;
 - 6) Address of individual company; and
 - 7) Full name, place and date of birth, occupation, place of residence, identification number, and tax identification number of the founders as well as directors and individual shareholders of the Company.

Fourth, Sole Proprietorship Financial Statements; Individual companies are required to make financial reports. The financial reports will be registered electronically and the ministry will issue proof of receipt of the financial statements electronically. The format for the financial statements is as follows:

- a. Statement of financial position;
- b. Income statement; and
- c. Notes to the current year's financial statements.
- d. If the Individual Company does not submit financial reports, it will be subject to sanctions in the form of:
- e. written warning;
- f. Termination of access rights to services; or
- g. Revocation of legal entity status.

Fifth, Change of Individual Company; If an individual company is going to make changes, it

is necessary to make changes by filling out a change statement letter with the contents of the changes as follows:

- a. The name and domicile of the individual Company;
- b. The period of establishment of an individual company;
- c. The aims and objectives as well as the business activities of the individual Company;
- d. Total authorized capital, issued capital, and paid-up capital;
- e. Nominal value and number of shares;
- f. Address of individual company; and
- g. Full name, place and date of birth, occupation, place of residence, identification number, and tax identification number of the founders as well as directors and individual shareholders of the Company.
- h. The statement of change is determined by a decision of the shareholders of the individual company which has the same legal force as the general meeting of shareholders and is submitted to the Minister electronically to obtain a certificate of statement of change.

Sixth, Changes in Status of Individuals; An individual company must change its status from an individual if:

- a. Shareholders become more than 1 person
- b. Does not meet the criteria for micro and small businesses as stipulated in the legislation regarding micro and small businesses.
- c. The change in status can be made by making a deed of change through a notarial deed and registered electronically with the Minister.

Seventh, Dissolution of Individual Company; The dissolution of an individual company is determined by a decision of the shareholders of the individual company which has the same legal force as the general meeting of shareholders as outlined in the statement of dissolution and notified electronically to the Minister.

The format for the statement of dissolution of the company is as follows:

- a. The name, domicile and complete address of the individual company;
- b. The period of expiration of an individual company;
- c. The aims and objectives as well as the business activities of the individual Company;
- d. Total authorized capital, issued capital, and paid-up capital;
- e. Nominal value and number of shares;

- f. Full name, place and date of birth, occupation, place of residence, identification number, and tax identification number of the founders as well as directors and individual shareholders of the Company.

An individual company may be dissolved for the following reasons:

- a. Based on the decision of the individual company, the legal force is equal to the shareholders;
- b. The period of establishment specified in the Statement of Establishment or amendments thereto has expired;
- c. Based on a court order;
- d. With the revocation of bankruptcy based on a decision of a commercial court that has permanent legal force, the bankruptcy estate of an individual company is not sufficient to pay the bankruptcy costs;
- e. Bankruptcy assets of individual companies that have been declared bankrupt are in a state of insolvency as regulated in the law concerning bankruptcy and suspension of debt payment obligations; or

The revocation of the business license of an individual company, thus requiring the individual company to carry out liquidation by filling out a statement of dissolution

III. CONCLUSION

MSMEs have many advantages in optimizing the utilization of national resources. However, its development is still constrained by various classical problems. One of them is the difficulty in obtaining the legality or formality of the business. The concept of a sole proprietorship has various advantages, as regulated in Government Regulation Number 8 of 2021 concerning Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses. The Job Creation Law changes the ratification regime to a registration regime, including for this sole proprietorship. These are the legal facts found by the author who have concepts that are relevant to the development of Legal Studies in reviewing sole proprietorship.

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