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The Existence of Individual Companies As Legal Entities in Micro And Small Enterprises in Indonesia: A Review of The Problems of The Alter Ego Doctrine

Kineisha Salma Syakira[1*], Nur Sa'adah Firdaus[2], Nyulistiowati Suryanti[3], Devania Yuanitasari[4]

[1*]Universitas Padjadjaran
Jl. Raya Bandung, Jatinangor, Sumedang, Jawa Barat
Kineisha21001@mail.unpad.ac.id

[2] Universitas Padjadjaran
Jl. Raya Bandung, Jatinangor, Sumedang, Jawa Barat
Nur21007@mail.unpad.ac.id

[3] Universitas Padjadjaran
Jl. Raya Bandung, Jatinangor, Sumedang, Jawa Barat
nyulistiowati@unpad.ac.id

[4] Universitas Padjadjaran
Jl. Raya Bandung, Jatinangor, Sumedang, Jawa Barat
deviana.yuanitasari@unpad.ac.id

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***Abstract**: The enactment of the Job Creation Law affects the provisions of Limited Liability Companies. The mechanism for establishing an Individual Company which is explained implicitly in the Company Law and the Job Creation Law raises issues related to the process of organ responsibility in an Individual Company which states that directors can concurrently hold positions as shareholders and vice versa. One of the problems of the presence of Individual Companies in MSEs in Indonesia is the birth of Alter Ego conditions. The solution to limit the unlimited liability of corporate organs is that the government needs to strengthen and reinforce the doctrine of Piercing the Corporate Veil for Individual Companies and provide legal certainty regarding the regulation of corporate organs in the Company Law and Government Regulation No. 8 of 2021. This article examines the existence of individual companies in the context of micro and small businesses in Indonesia. The focus of the analysis lies on the concept of the alter ego doctrine which often becomes a problem in business practice. This research utilizes a document analysis approach and literature study to explore the legal and practical implications of the alter ego doctrine on individual companies in Indonesia. The analysis shows that the alter ego doctrine has a significant impact on the personal liability of micro and small business owners. The implications of these findings are discussed in the context of business regulation and legal protection for micro and small business owners in Indonesia.*

***Keywords** : Limited Liability Company, Individual Company, MSE, Alter Ego Doctrine, Piercing the Corporate Veil.*

Introduction

Currently, unemployment is still a major economic problem in Indonesia. The number of unemployed people in Indonesia in the February 2023 period reached almost 8 million people. In fact, not a small number of those with relatively high education also have the status of being unemployed. Based on the results of a study by the Smeru Research Institute, the most effective solution to overcome the increasing number of unemployed is to encourage the development of entrepreneurship among youth. This is supported by survey results which show that 66% of Indonesia's population has a passion for entrepreneurship. Individual companies are a common form of business in Indonesia, especially in the micro and small sectors. However, many times, business owners face the risk of personal liability for the company's debts, especially in cases where the alter ego doctrine is applied by the courts. This article aims to investigate this issue further and provide a better understanding of the implications of the alter ego doctrine for the existence of private companies in Indonesia.

In 2020, the government attempted to encourage the development of micro and small businesses by issuing Law Number 11 of 2020 concerning Job Creation (UU Job Creation). One of the laws amended in the Job Creation Law is Law Number 40 of 2007 concerning Limited Liability Companies (UU PT). The Job Creation Law changes several provisions regarding PT, one of which is the provisions of Article 1 number 1 of the PT Law regarding the meaning of PT. Between Articles 153 and 154 of the PT Law, the Job Creation Law has inserted 10 articles that specifically regulate individual companies in micro and small businesses.

Apart from expanding the Job Creation Law, the government also issued two new regulations, namely Government Regulation Number 7 of 2021 concerning the Empowerment of Cooperatives and MSMEs (PP No. 7 of 2021) and Government Regulation Number 8 of 2021 concerning Capital, Establishment and Dissolution of MSME Companies (PP No. 8 of 2021). After the publication of the Job Creation Law, PP no. 7 of 2021, and PP no. 8 of 2021, a company can be founded by just one person

with the criteria of a micro business with a maximum capital of one billion rupiah and a small business with capital of one billion to five billion rupiah.

However, the provisions on Individual Companies for micro and small businesses regulated in the PT Law still cause problems. A company law expert from the Faculty of Law, Airlangga University, Dian Purnama Anugerah, said that one of the problems with Individual Companies is that the founder of an Individual Company has the position of director and shareholder, thus creating a condition known as the alter ego doctrine. An alter ego occurs if someone in a company holds the position of director, shareholder or board of commissioners, then through his or her authority uses the company for certain purposes, then the company is indirectly used as a tool to achieve personal gain and can even harm third parties.

In fact, an individual company creates an alter ego condition so that an action carried out by a person cannot be easily determined whether it was carried out as a director or as a shareholder. This is based on the fact that the organs of directors will have the same thoughts as the organs of shareholders because both organs are occupied by the same person. Therefore, it is important to strictly regulate the provisions of the Piercing the Corporate Veil doctrine for individual companies in order to limit the liability of a single shareholder in individual companies.

The issues that will be discussed in this research are (1) Regulation of Individual Companies in the Job Creation Law and PT Law; (2) The position and responsibilities of the Individual Company organs regarding the creation of conditions for the Alter Ego doctrine; and (3) Application of the Piercing the Corporate Veil doctrine to the limitation of liability of a single shareholder in an Individual Company. This research aims to find out whether the existence of this Individual Company is in accordance with the government's aims and objectives to provide convenience for micro and small businesses. Micro and small enterprises (MSEs) in Indonesia have become the backbone of the economy, making a significant contribution to economic growth and job creation. In the midst of business dynamics, individual companies have become one of the entity forms commonly adopted by MSEs. However, the practice of using the alter ego doctrine in this context is cause for concern because of the potential for complex legal and practical consequences. Therefore, an in-depth analysis of the

existence of individual companies in MSEs, with a focus on the alter ego doctrine, is important to understand the legal basis and practical implications.

Research Methods

The type of research used in this article is normative juridical legal research. The application of this type of normative juridical legal research in this paper is carried out by studying and examining a problem through secondary data obtained from various literature. Problem solving is done by collecting data and then analyzing it qualitatively. The qualitative analysis applied is analyzing data sourced from statutory regulations, doctrine, legal principles, concepts, theories and the author's views. The writing of this article is based on document analysis and literature studies relevant to the research subject. Data was obtained from secondary sources such as books, scientific journals, and laws and regulations related to business and law in Indonesia. A qualitative approach was used to analyze the findings and develop the arguments in this article.

Results and Discussion

The Company Law is currently still a reference regarding Limited Liability Companies because it is considered clear and in accordance with the development of Limited Liability Companies. The definition of a Limited Liability Company according to Article 1 point 1 of the Company Law is a Limited Liability Company as 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 and meets the requirements stipulated in this law and its implementing regulations. The problem that was present when the Job Creation Law was passed was that the regulation changed and expanded the articles contained in the PT Law.

Changes and Expansions	**UUPT**	**UU CIPTA KERJA**
Amount Established	Two or more people	One person is called an Individual Company
Expansion of Individual Companies	Unregulated	"An Individual Company is an individual legal entity founded by only one individual and meets the UMK criteria."

Establishment Process	Done with an agreement accompanied by a Notarial deed in Indonesian	The establishment of an individual company only requires a statement of establishment, no longer requiring a notarial deed
Capital	Minimum fifty million	There is no regulation regarding the capital for establishing an Individual Company
Legal Entity Status	This was obtained when the Decree of the Minister of Law and Human Rights was first issued regarding the legalization of legal entities	Obtained when first registering with the Minister of Law and Human Rights accompanied by obtaining proof of registration.

Table 1. Differences regarding Individual Companies in the PT UU and the Job Creation Law

Article 109 of the Job Creation Law explains that a Limited Liability Company is a capital partnership formed on the basis of an agreement by 2 (two) or more people, but currently it can be implemented by just one person or is called an Individual Company. This is in line with the explanation of Article 153 letter A of the Job Creation Law which confirms that the establishment of an Individual Company is carried out by only one individual and the Individual Company itself is a legal entity that meets the characteristics of an MSE. This means that the law creates a new type of PT according to the characteristics of MSEs stated in PP No. 8 of 2021. Therefore, the existence of these regulations aims to expand the provisions of Limited Liability Companies which are useful for the community.

The agreement which is a condition for establishing a PT is stated in a Notarial deed in Indonesian, whereas in the Job Creation Law, the establishment of an Individual Company only requires a statement of establishment, no longer requiring a Notarial deed. In practice, when establishing a Limited Liability Company, capital is needed to fulfill the elements of own wealth in a company. However, there are also differences regarding the capital provisions in the PT Law and the Job Creation Law, the capital for establishing a PT according to the PT Law is a minimum of IDR 50,000,000 (fifty million Rupiah), whereas in the Job Creation Law, the capital for

establishing an Individual Company is not regulated in these regulations. Later, the capital will be determined by the company founder himself. [1]

Another difference is in the provisions on legal entity status, in the UUPT a legal entity status is obtained when the Decree of the Minister of Law and Human Rights is first issued regarding the ratification of the legal entity, whereas in the Job Creation Law, the legal entity status of an Individual Company is obtained when it is first registered with the Minister. Law and Human Rights accompanied by proof of registration. Referring to Article 1 number (2) of the PT Law jo. Article 109 point (1) of the Job Creation Law, PT organs include the GMS, Directors and Board of Commissioners, meaning there are no changes regarding company organs. In PT, this is not a problem considering that the establishment of a PT is carried out by at least two people, while the establishment of an Individual Company can be carried out by just one person. A crucial thing that arises when the Job Creation Law is passed is the determination of the party who represents the Individual Company's organs in terms of actions and legal relations with third parties. In fact, the Job Creation Law does not change the provisions relating to PT organs so that PT organs are still valid.

In PP no. 8 of 2021, does not explicitly regulate individual organs, but in Article 7 paragraphs (1) and (2) PP No. 8 of 2021 explains that when establishing an Individual Company, it is mandatory to make a statement of establishment accompanied by the identity of the founder as well as director and shareholder of the Individual Company. This means that the organs of an Individual Company consist of founders who have two powers, namely as directors and shareholders. In this article there is no mention of the existence of a board of commissioners.[2] Thus, the company that can be established by UMK is an Individual Company.

However, when referring to the Company Law and the Job Creation Law, there are differences regarding the company organ regulations which are explained in Article 7 paragraph (2) letter g PP No. 8/2021 with the provisions on company organs as explained in Article 109 point (1) of the Job Creation Law that the limited liability company organs consist of the GMS, Directors and Board of Commissioners. The Job

[1] Siti Thali'ah Atina and dkk, "Dualisme Hukum Pendirian Perseroan Terbatas Pasca Berlakunya Undang-Undang Cipta Kerja," *Jurnal USM Law Review* 2, no. 2 (2022): 473.
[2] Putu Devi. Y.U. dan Kadek Agus S, *Op.Cit*., hlm. 775.

Creation Law expands the provisions for establishing a PT, while there are no expansions or changes to the provisions on company organs. Differences regarding provisions on corporate organs in individual companies cause legal uncertainty. On the one hand, the regulations for PT organs are contained in the Job Creation Law, on the other hand, the regulations for Individual Company organs are in PP No. 8/2021 is contrary to the laws and regulations that are above it.[3]

In carrying out its business activities, PT has three organs, namely the GMS, directors and board of commissioners. The authority given to the GMS as a company organ is not given to other organs and the GMS has an equal position with the board of commissioners and directors.[4] In general, directors have two duties, namely leading and representing the company, both inside and outside the court. The board of commissioners has the authority to monitor the company's policies and management and provide advice to the directors.[5]

In company law, the concept of Separated Legal Entity is also known, which states that a legal entity is an independent legal subject and has a separate identity from its shareholders or management.[6] The PT Law determines that the shareholder's liability is limited to the deposit for all the shares they own and does not include their personal assets. However, there is a possibility that this limited liability will be abolished if the shareholder is proven to have committed acts as regulated in Article 3 paragraph (2) of the PT Law.[7]

The responsibilities of the Board of Directors are also regulated in Article 97 of the PT Law, which states that company directors are responsible for managing the company in good faith and with full responsibility. If the company suffers losses resulting from errors or negligence by the directors in carrying out their duties, the

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[3] *Ibid,* hlm. 776.

[4] Binoto Nadapdap, *Hukum Perseroan Terbatas* (Jakarta: Jala Permata Aksara, 2009).

[5] Deviana Yuanitasari & dkk, "'Kajian Yuridis Terhadap Tanggung Jawab Anggota Direksi Dan Dewan Komisaris Perusahaan Pembiayaan Pada Pemenuhan Syarat Keberlanjutan,'" *Jurnal Comserva: Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 6 (2023): 2354.

[6] Nyulistiowati Suryanti & dkk, ""Penagihan Utang Pajak Terhadap Direksi Perseroan Yang Dinyatakan Pailit Dalam Putusan Mahkamah Konstitusi Nomor 41/PUU-XVIII/2020 T," *Jurnal Innovative: Journal of Social Science Research* 3, no. 5 (2023): 4908.

[7] "Undang-Undang N0. 40 Tahun 2007 Tentang Perseroan Terbatas," Pub. L. No. 40 (2007).

directors are fully personally responsible for the losses. Liability for company losses can be excluded if the directors can prove the matters specified in Article 97 paragraph (5) of the PT Law. Directors are prohibited from doing things that use the name of the company with the aim of personal interests and/or certain groups of individuals within the company.[8]

The Board of Directors has full authority and responsibility to manage the company and represent the company as a form of realizing the company's own interests. However, quite a few directors use the company as an alter ego to use the company's money and assets for their personal interests. This can also happen to shareholders who have bad faith in taking action in accordance with Article 3 paragraph (2) of the PT Law. If this condition occurs in an individual company, it will be difficult to determine whether the action was carried out in the context of being a director or shareholder.

The alter ego doctrine teaches that a shareholder or director in a company will be subject to unlimited liability if there is no separation of assets between the shareholder or director and the company. If an alter ego condition occurs, namely the company is used for personal interests, then the court can apply personal responsibility by ignoring the limited liability nature of the Individual Company. Shareholders will be free from the limited liability they have, while directors will be responsible for their actions which are detrimental to the company's assets.

If a director or shareholder uses the assets of an Individual Company for their personal interests and there is a loss to a third party, then if they are a director they can be held civilly or criminally liable in terms of embezzlement or fraud. However, if he is a shareholder in an Individual Company, then a third party can ask the shareholder to be personally liable for more than the shares they own. However, for third parties who experience losses and report shareholders criminally, the shareholders will need a longer time to compensate for these losses. This is due to the possibility of detention or imprisonment which can hinder the involvement of shareholders in the management of the company, so that no member of the board of

[8] Jetly B. Wauda, "Tugas Dan Tanggung Jawab Direksi Sebagai Organ Dalam Perseroan Terbatas Menurut Undang-Undang Nomor 40 Tahun 2007," *Jurnal Lex Privatum* VII, no. 4 (2019): 58.

directors or other shareholders can explain or take care of the interests of managing the company.[9]

Article 3 paragraph (1) of the Company Law states that shareholders have limited responsibility, namely "Company shareholders are not personally responsible for agreements made on behalf of the Company and are not responsible for losses to the Company in excess of the shares they own." The sound of this article means that the company's debts cannot be accounted for against the shareholders' assets. Shareholders have a limit of liability, which is only imposed on share capital that has been paid up previously, except in cases where the company does not yet meet the requirements as a legal entity, the shareholder commits bad faith with the aim of personal interest in the name of the company, the shareholder commits an unlawful act by utilizing wealth. company which causes the company's debts to be unable to be repaid. In individual companies, directors who are also shareholders can be subject to this responsibility if they fulfill one of the excluded elements. This is called the Piercing the Corporate Veil doctrine, which means that the limited liability of shareholders is erased so that the shareholder's responsibility becomes unlimited to include their personal assets.

In fact, proving whether a shareholder committed an act in bad faith is a complicated matter considering that there is no board of commissioners within the company's organs. In fact, the board of commissioners functions as a supervisor of the company's activities so that actions that arise from bad faith do not occur. Regarding the limitation of responsibility to penetrate personal assets arising from personal interests, it is said to be counterproductive because the establishment of an individual company is carried out by one person, which means it will protect his personal assets as well. It is true that there are obligations for Individual Companies in terms of submitting financial reports to the Ministry of Law and Human Rights, but this does not guarantee that this is subject to strict supervision.

[9] Febri Jaya, "Potensi Konflik Kepentingan Dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas Dalam Omnibus Law," *Jurnal Kosmik Hukum* 21, no. 2 (2021): 121.

Regulations regarding Piercing the Corporate Veil in individual companies need to be further emphasized by the government. The Piercing the Corporate Veil doctrine also needs to be applied to individual companies in order to uphold accountability by the sole shareholder in order to create a good management structure for the company or what is known as Good Corporate Governance. In an Individual Company whose founder has two powers, namely as director and shareholder, it is appropriate for the assets of the Individual Company to be separated from their personal assets. This is because Individual Companies do not have a board of commissioners who can provide input, as a result, Individual Companies do not have a system of checks and balances. Therefore, directors and shareholders in Individual Companies must be careful in their actions.[10]

Conclusion

The regulation of individual companies in the Job Creation Law and PT Law still creates legal uncertainty because these two laws are not in line with PP No. 8 of 2021 regarding PT organs. The presence of Individual Companies in micro and small businesses still raises several problems, namely related to the position of directors who are simultaneously shareholders in Individual Companies, thus creating an alter ego condition. This condition makes it difficult to determine whether a person's actions were carried out as a director or shareholder. Directors and shareholders must be responsible for their actions which are detrimental to the company and/or third parties.

From the analysis carried out, it can be concluded that the alter ego doctrine has significant implications for individual companies in micro and small businesses in Indonesia. The risk of personal liability for business owners becomes higher when this doctrine is applied by the courts. Therefore, better legal protection and a better understanding of the alter ego doctrine are needed to improve the sustainability of micro and small businesses in Indonesia.

Thus, the provisions of the Piercing the Corporate Veil doctrine for Individual Companies really need to be strictly regulated by the government in law and in practice to provide limits on shareholder liability. The government also needs to provide legal

[10] Men Wih Widiatno, "Penerapan Piercing The Corporate Veil Dalam Menilai Tanggung Jawab Pribadi Pendiri Perseroan Terbatas Perorangan," *Lex Jurnalica* 19, no. 1 (2022): 105.

certainty regarding the regulation of company organs in the PT Law and PP No. 8 of 2021, especially regarding the position of the board of commissioners in company organs. Apart from that, the government needs to pay more attention to the regulation of individual companies in micro and small businesses to provide legal protection to third parties or creditors.

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