

Comparison of Laws Regulation of Indonesian and Malaysian Sole Companies

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Abstract. *The establishment of a Sole Proprietorship, known as Perseroan Perorangan in Indonesia and Sendirian Berhad (Sdn Bhd) in Malaysia, aims to facilitate micro and small business enterprises (MSMEs) by allowing a single individual to establish a limited liability company. This paper compares the legal frameworks governing Sole Proprietorships in Indonesia and Malaysia, focusing on aspects such as legal definitions, establishment requirements, authorized capital, corporate liability, and dissolution procedures. The research employs a normative legal method, analyzing statutory regulations, legal doctrines, and academic sources. Findings indicate that while both countries recognize the single-member company concept, Indonesia enforces stricter eligibility criteria, allowing only Indonesian citizens to establish Perseroan Perorangan, whereas Malaysia permits both locals and foreign residents. Moreover, Malaysia's legal framework provides more flexibility regarding shareholder numbers and capital requirements. The study concludes that regulatory harmonization and further legal clarifications are necessary to enhance the effectiveness of Sole Proprietorship policies in both jurisdictions.*

Keywords: *Business; Company; Comparison; Individual; Limited.*

1. Introduction

The government continuously evaluates regulations and policies in order to accommodate the ease for entrepreneurs in establishing and running their businesses which will then have a positive impact on the nation's economy. The birth of the Job Creation Law (UUCK) is the initial milestone for changes regarding the provisions of Limited Liability Companies (PT) with the emergence of regulations on Individual Companies for those running micro and small businesses often referred to as UMK. UUCK with the *omnibus law concept* must be recognized as a regulation that has a significant impact on changes to related laws and regulations that regulate the material of the previous UUCK (Arief & Ramadani, 2021). Regulations regarding Individual Companies increase the flexibility of Limited Liability Companies by eliminating restrictions that are obstacles to the establishment of companies and their operational activities. (Pokorná & Večerková, 2014)

PT has been known in Indonesia since 1848. The regulation of PT is regulated in positive law aimed at organizing the company's operations, which include its organizational, commercial, and socio-cultural dimensions (Fuady, 2002). The regulation of PT has existed since the Commercial Code in Articles 36 - 56. Then in 1995 it was regulated in Law Number 1/1995 concerning Limited Liability Companies (UU PT) which in 2007 was replaced by Law Number 40/2007 (Pratama & Turisno, 2023). More than 17 decades

have passed, the regulation regarding the legal entity of PT which has been known so far is a business entity that runs a medium and large business with a minimum of 2 (two) founders except for state-owned PT (PT BUMN). Almost 20 years since the last amendment, UUPT was amended by UUCK in 2020. The regulation of PT in UUCK allows MSME entrepreneurs to establish a Company with only 1 (one) founder so that it is called an Individual Company. This Sole Proprietorship is called *one-tier* where the Company is run with a single structure through a scenario of one person as a shareholder, taking on the role of director and supervising the company's operations without a commissioner structure. (Isnaeni, 2021)

The ease of establishment is also facilitated for this Individual Company, in addition to the ease because the minimum capital is not regulated, only the maximum capital is known, which is IDR 5M (Five billion rupiah), the establishment of this Company does not require a notary deed. This convenience is expected to be a stimulus for all levels of society to be more interested in running a business in a legal entity. (Hansen, 2014)

This arrangement of Sole Proprietorship in other countries is not new. Malaysia has known a similar form of business entity since 2016 through changes to the Malaysian company law stipulated in *the company act* 2016 (Chan Wai Meng, 2024). This Sole Proprietorship arrangement in Malaysia has brought it to the 12th position in *the Easy of Doing Business rank (EoDM)* (Aziz & Febriananingsih, 2020). This Sole Proprietorship in Malaysia is called *Sendirian Berhad (Sdn Bhd)* (Malaysia acclime, 2024). *Sdn Bhd* is a Company characterized by having a distinct legal identity separate from its shareholders, allowing it to be considered a "legal entity" capable of entering into contracts, entering into transactions, fulfilling tax obligations, transferring assets, and being subject to legal processes (Putri, 2020). This paper will examine the comparative legal regulations governing Sole Proprietorships in Indonesia with those in Malaysia.

The formulation of the problem in this study focuses on comparing the regulations and legal aspects of Sole Proprietorship Companies in Indonesia and Malaysia. Specifically, the research aims to explore two main issues. First, it examines how the regulations governing Sole Proprietorship Companies differ between the two countries, highlighting similarities and differences in their legal frameworks. Second, it analyzes the concept of limited liability in Sole Proprietorship Companies in both jurisdictions, investigating how each country addresses liability issues and the extent of protection provided to business owners. Through this comparative approach, the study seeks to provide insights into the legal standing and implications of operating a Sole Proprietorship Company in Indonesia and Malaysia.

2. Research Methods

Analyzing the answers to the problems above, the author in this paper uses the normative legal research method. Namely a method that uses materials from secondary data or library data which includes primary legal materials, secondary legal materials and tertiary legal materials (Soekarto, 2019). Normative legal research aims to offer legal arguments when faced with situations of absence, ambiguity, or contradiction of norms, and to uphold critical aspects of the law (Diantha & Sh, 2016). The research of this paper was conducted by researching data from laws and regulations and scientific opinions regarding the research topic from various sources including books, papers and journals.

3. Results and Discussion

The formation of the sole proprietorship model is motivated by the natural nature of the desire of every individual who wants to establish a company with limited liability to have the option to establish a company with one person (Chewaka, 2016). The sole proprietorship is based on considerations because the limitation of establishing a company to be established by at least 2 (two) people in practice causes legal smuggling and makes it difficult for entrepreneurs in the small and medium sectors (Edi Atmaja et al., 2023). The sole proprietorship from the term is a combination of the concept of an individual business (in Indonesia known as PO, PD) mixed with the concept of PT (Patel, 2016). Many countries have implemented this form of company and it has become popular and in demand. This is because the legal entity is recognized, so that ownership can be transferred, the responsibility of shareholders is limited, and the trading profits from sole ownership (Patel, 2016). In its operation, this sole proprietorship runs simply, there is no need to hold a general meeting of shareholders and there is no meeting of the board of directors. This is because both the shareholder and the director are only 1 (one) person. This *one tier board* mechanism has several advantages over *the two tier board*, namely having superior information flow, speed in decision making, and direct understanding and involvement in the business (Block & Gerstner, 2016).

The launch of the Sole Proprietorship is in line with the Government's dedication to improving *the Ease of Doing Business index* or the ease of doing business index abbreviated as *EoDB*. The focus of *the World Bank's EoDB* is on regulations that affect domestic MSMEs in 10 areas, namely ease of starting a business, taking care of building permits, obtaining electricity access, land/building registration, getting loans, protecting minority shareholders, paying taxes, exports-imports, enforcing contracts and resolving bankruptcies. (Guidotti, 2015)

The regulation of individual companies in Indonesia is something new for the public based on the UUCK, but was actually known before the UUCK came into effect, including for:

- "1. a limited liability company whose shares are entirely owned by the state;
2. Companies that manage stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions as regulated in the Capital Market Law, so that the UUPT also recognizes what is known as *eenmansvennootschap*. (Edi Atmaja et al., 2023)

The exceptions to the provisions of the two PTs above are implemented in the context of public interest. Teddy Anggoro stated that both are exempted from the obligation of the number of founders in the context of control effectiveness and in the context of protecting public interests. The discourse on expanding the exception to UMK is not only a reflection of public interest but also private interest as the development of PT regulations in Indonesia following the development of PT in the world.

The expansion of the intended exceptions was finally accommodated by the enactment of the UUCK. In the regulation of PT through the amendment of the UUPT with the UUCK, Individual Companies can apply to:

- "a. a limited liability company whose shares are wholly owned by the state; b. a regional government-owned enterprise; c. a village-owned enterprise; d. a company that manages a stock exchange, clearing and guarantee institution, depository and settlement institution, and other institutions in accordance with the provisions of laws

and regulations in the capital market sector; or e. a company that meets the criteria for micro and small businesses." (Susilowardani, 2023)

Special treatment of UMK is carried out considering its very large role in the Indonesian economy. According to data from the Indonesian Trade Office:

"The role of MSMEs is very large for the growth of the Indonesian economy, with the number reaching 99% of all business units. In 2023, MSME business actors will reach around 66 million. The contribution of MSMEs reaches 61% of Indonesia's Gross Domestic Product (GDP), equivalent to IDR 9,580 trillion. MSMEs absorb around 117 million workers (97%) of the total workforce." (Prihanto & Damayanti, 2020)

Attention to MSMEs is not only done in Indonesia. Small business companies play an important role in any country, therefore the global world pays attention to MSMEs because they support the economy. MSMEs in Malaysia cover more than 90% of the number of companies in Malaysia, which is certainly in line with the absorption of labor (Palanimally, 2016). However, in Malaysia there is no regulation that *Shn Bhd* that runs MSMEs can only have 1 (one) founder.

3.1. Comparison of Corporate Arrangements Individuals in Indonesia and Malaysia

3.1.1 Definition and legal basis

Before the UUCK, the UUPT stated that the definition of "PT is a Limited Liability Company which is a legal entity established based on an agreement, carrying out business activities with authorized capital divided entirely into shares, and fulfilling the requirements stipulated in this Law." (Laracaka, 2023). From this understanding, the elements of a PT are a form of business entity whose establishment is based on an agreement (notarial deed), the authorized capital is divided into shares (the capital is not just one), and meets the requirements of the UUPT.

With the birth of UUCK, there was a shift in the understanding of PT to:

"Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares or an individual legal entity which meets the criteria of micro and small businesses as regulated in laws and regulations concerning micro and small businesses." (Susilowardani, 2023)

From this understanding of PT, the name of the Sole Proprietorship was born, which means it was established by 1 (one) person. The form of Sole Proprietorship for MSMEs is supported by the provision that states "A company that meets the criteria for micro and small businesses can be established by 1 (one) person". Although it was born through the UUCK which allows the establishment of a Company to be carried out by 1 (one) founder, the nomenclature of "Sole Proprietorship" is only regulated in PP 8/2021. Malaysia provides the term *private limited company (Sendirang Berhad or Sdn Bhd)* for limited companies that have not *gone public*. The specific naming for a Sole Proprietorship in Malaysia is not mentioned, meaning it is the same as a Company with 2 (two) or more founders. However, the regulation regarding *Sdn Bhd* for 1 (one) founder is recognized in *the Company Act 2016* in Malaysia. In Article 9 "A company shall have (a) a name; (b) one or more members, having limited or unlimited liability for the obligations of the company; (c) in the case of a company limited by shares, one or more shares; and (d) one or more directors". The regulation regarding the number of members of all types of companies refers to this article, this means that for *Sdn Bhd* it can also be understood that it can be established by only 1 (person). The consequences of the regulation of *Sdn Bhd* which is given the option of 1 (one) or more make it more

flexible, in the event that during the journey of the business entity there is an increase in investors so that *sharing is possible*.

3.1.2 Provisions Regarding Authorized Capital

From the definition of PT in the PT Law, it is clear that the existence of authorized capital is mandatory in a PT. The authorized capital in question is divided into shares (*sero*). Therefore, the existence of authorized capital is a mandatory element in establishing a company. However, in several countries, exceptions regarding the existence of authorized capital are known or carried out without authorized capital (Korotash, 2014). Indonesia has not removed the obligation to have authorized capital in a PT. However, currently authorized capital is more flexible because there is no minimum set.

The provisions regarding the amount of authorized capital of a Sole Proprietorship in Indonesia in the UUCK and PP 8/2021 regulate that it will be determined in the decision of the founder of the Company. The nominal amount is not limited. Of the minimum capital amount stipulated in the Decree in question, 25% must be deposited or placed. PP 21/2021 states that the minimum capital amount for certain business activities is carried out in accordance with related regulations. Meanwhile, the amount of authorized capital of *Shd Bhd* Malaysia is not regulated in *the Company Act*.

3.1.3 Provisions regarding Establishment Requirements

In Indonesia, the establishment of a Sole Proprietorship can only be done by Indonesian citizens with a minimum age requirement of 17 years and legal competence. Registration is done by filling out the Statement of Establishment in Indonesian. The provisions for the establishment of a Sole Proprietorship do not require a notary deed. The requirements needed for its establishment are a registration form, a photocopy of KTP, a photocopy of NPWP. Registration can be done on the ahu.go.id page, with the application completion time being 1 (one) working day. In the regulation of this Sole Proprietorship, there is also no mention of the obligation to have articles of association. Unlike the regulation of Indonesian Individual Companies, *Sdn Bhd* Malaysia for *shareholders of 1* (one) person or more is limited to being owned by Malaysian citizens but can also be owned by foreigners who are not Malaysian citizens who are domiciled in Malaysia (Thirosha, 2025). Regarding the age of the founder of *Sdn Bhd*, it is not regulated but there is a regulation on the minimum age of the director, which is 18 (eighteen) years and domiciled in Malaysia, so in the case that it consists of 1 (one) founder, then the founder must be at least 18 years old and domiciled in Malaysia (Lowry & Holland, 2011). The regulation of the number of *shareholders of Shn Bhd* in Malaysia is regulated with a maximum provision of 50 people. The existence of *a constitution* is also not an obligation in *Shn Bhd* Malaysia, its existence is only optional, but even without *a constitution*, the rights and obligations of Directors and members are bound according to *the company act 2016*. *Shn Bhd* registration can be done online via www.ssm.com.my.

3.1.4 Comparison of Changes in Status of Sole Proprietorship in Indonesia and Malaysia.

In the course of its business, the Individual Company may undergo changes, namely in the event that it wants to join with another person so that the requirement of 1 (one) person is no longer met or if the business is running smoothly which results in continuous capital additions so that the capital requirements no longer meet the UMK capital. In the event that one or both of the above conditions are met, it is required to change the Individual Company into a Capital Partnership Company (regular PT). However,

considering that in the form of an Individual Company there is no need for a notarial deed, in this change, the founder must attach a Notarial Deed. In the management of this notarial deed, it will be an obstacle if the founder of the Individual Company is not yet 18 years old, even though he is legally competent and meets the requirements for establishing an Individual Company, he cannot change the status of the Company. (Hilmansyah et al., 2024)

In the event of a change in the list of shareholders at *Shn Bhd* Malaysia, this can be done by reporting the change in shareholders to *the Registrar*, either a change in the form of a reduction or addition of shareholders, no later than 14 days from the date of the change in the list of shareholders.

3.1.5 Dissolution of Sole Proprietorship

Dissolution of a Sole Proprietorship is carried out for the following reasons: 1. Decision of the founder, the term has expired, a determination in a court decision, a commercial court decision revoking the bankruptcy status, the Company's bankruptcy assets are sufficient to pay bankruptcy costs, the Company's bankruptcy assets are in a state of insolvency and postponement of debt payment obligations, or revocation of business licenses. Dissolution is carried out by filling out a Dissolution Statement by filling out the dissolution statement format in the SABH. If the Company is declared bankrupt, the dissolution of the company is carried out after the settlement of the bankruptcy assets by the curator. Recording of the termination of the legal entity status and the removal of the name of the Sole Proprietorship from the list of Companies is carried out by the Ministry of Law and Human Rights. Effective from the time of registration of the dissolution statement which is carried out electronically.

The arrangements for the dissolution of *Shn Bhd* according to *the company act 2016* state that " *The winding up of a company may be effected either (a) by way of a winding up order made by the Court; or (b) by means of a voluntary winding up.*" Thus, the regulation regarding the dissolution of the Company can be done voluntarily on the initiative of the shareholders, but can also be done by court decision.

3.2. Comparison of Corporate Liability Arrangements

An efficient accountability system causes actors to consider the impact of all their actions. Limitation of liability is a subsidy for risky behavior of actors and allows actors to externalize some of their actions (Carney, 2005). PT including individual companies obtain legal entity status after registration with the Minister of Law and Human Rights which is proven by obtaining proof of registration. According to Maijers, the requirements for a legal entity are that there is a separation of the assets of its members, there is a common interest based on law, the interest is permanent, meaning not only for the short term, can show separate assets as objects of reference and also for the interests of the company, not including the interests of shareholders (Iskandar, 1977). A legal entity or *rechtspersoon* is an entity that has rights, obligations and as well as individuals. (Rudy & Ali, 2023)

The liabilities of a company are distinct from the personal assets of its owners. As a result, when a company engages in transactions with external parties, accountability lies with the company itself. This delineation ensures that the company's liabilities are limited solely to the assets it owns. (Fuady, 2002)

A sole proprietorship is a branch of a limited liability company, so it is a legal entity that has its own rights, obligations and assets that are different from its sole founder. This form offers protection to shareholders from debts, obligations and actions of the company. (Pearce, 2012)

The concept of *corporate separate* legal personality clearly states that a limited liability company is legally distinct from its individual founders or shareholders, thus limiting the financial liability of its shareholders to the extent of their share capital (*limited liability of its shareholders*) (Dewi, 2022). The limitation of liability for the founders of a limited liability company is implemented as a stimulus for entrepreneurs not to be reluctant to start or operate their business. The limited liability arrangement prevents investors (founders of the company) from losing more than the capital invested in their business (Simkovic, 2018). This *separate legal entity* allows the Company to continue to exist without relying on its members or *shareholders*. With this separation also allows a formal distinction between which contracts are made by members in their personal capacity and those made by the Company (Micheler, 2021). As a result, third parties are unable to file claims and file lawsuits against the PT based on the legal liability of shareholders without additional features. Conversely, it does not have the right to enforce obligations on third parties that are intended to be paid to the company's shareholders. (Kurniawan, 2014) Based on the principle of *separate legal entity*, the principle of *limited liability* was born. The PT Law regulates, among other things:

- "a. The company's shareholders are not personally liable for obligations made in the name of the company.
 - b. The company's shareholders are not responsible for losses experienced by the company.
 - c. Shareholders have limited liability to the amount invested or not exceeding the number of shares owned."
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The regulation of shareholder liability in *Shn Bhd* is like PT limited to its shares. In *the Company Act 2016 Malaysia* it is stated that " *A company is limited by shares if the liability of its members is limited to the amount, if any, unpaid on shares held by the members*" The Company Act also accommodates the regulation regarding separate legal entities where it is stated that " *A company incorporated under this Act is a body corporate and shall (a) have legal personality separate from that of its members; and (b) continue in existence until it is removed from the register*" It can be seen that the regulation of separate legal entities is strictly regulated in Malaysia.

Through the doctrine of *separate corporate personality*, it is emphasized that between the company as a legal entity and the shareholders there is a separating veil *known as the corporate veil*. (Iqlima Thahirah et al., 2023)

Under certain conditions, the corporate veil can be lifted, which is referred to as the principle of *piercing the corporate veil*, which is a principle understood as a mechanism for assigning responsibility to individuals outside the legal entity, in cases where an act is carried out by a company but the focus is not on whether the act is carried out by the company itself or by the individuals behind it. The fundamental purpose of applying this doctrine is centered around promoting justice, especially for shareholders, minority stakeholders, and external parties who have certain affiliations with the corporation. *Piercing the corporate veil* can be done if there are statutory regulations regarding its neglect, fraud occurs, there is a desire by the majority shareholder to use the company to avoid its legal obligations, the company is used by the majority shareholder to hide irregularities, the company is an alter ego of the founder, where a company is run as an economic entity, at any time in the interests of justice. (Cox, 1997)

UUPT accommodates the regulation of *piercing the corporate veil*. This law states that shareholders are personally responsible for:

- "a. The requirements of the company as a legal entity have not been or are not met; b. The relevant shareholder, either directly or indirectly, in bad faith, uses the company for

personal interests; c. The relevant shareholder is involved in unlawful acts committed by the company; or d. The relevant shareholder, either directly or indirectly, unlawfully uses the company's assets, resulting in the company's assets being insufficient to pay off the company's debts."

In *Common Law Jurisprudence* (Malaysia adopts this legal system), there are three general doctrines that allow for the penetration of the principle of *limited liability* or the application of *Piercing the Corporate Veil*, namely: (Bull, 2014)

- a. The doctrine that holds that *Piercing the Corporate Veil* is applied on the condition that there is control over the company, which results in the company not having an independent existence, the control influences the occurrence of negligence of obligations, and the act of negligence on the obligations in question causes losses. This doctrine is called the *Instrumentality Doctrine*.
- b. The doctrine that *Piercing the Corporate Veil* is applied on the condition that the interests of shareholders are above the interests of the Company and there is difficulty in distinguishing the corporate entity from the shareholders; This doctrine is known as the *Alter Ego Doctrine*
- c. The doctrine that holds that the termination of the consolidation or separation of the Company's assets is carried out based on evidence in court, so that the evidence is case by case. This doctrine is known as the *Identify Doctrine*. In the Malaysian *Company Act*, there are no provisions regarding *Piercing the Corporate Veil*, this is probably because this principle is common in countries with a *common law legal system*.

4. Conclusion

Indonesian Individual Company or *Shn Bhd* Malaysia is a legal entity that is protected and regulated by law. The establishment of this Company is facilitated in the form of 1 (one) owner. In Indonesia, the establishment is also facilitated, namely not having to have a notary deed. The conclusion of the comparison of the regulations of Indonesian Individual Company or *Shn Bhd* Malaysia is described in the table below.

No	Information	Sole Proprietorship	<i>Shn Bhd</i>
1	Legal basis	UUPT as amended by UUCK and its implementing regulations	<i>Company Act</i> 2016
2	Number of founders	1 person, if more must change to PT Persekutuan modal.	- 1 or more people Maximum 50 people - There is a Company Secretary
3	Authorized capital	Determined in the company's founders' decision	-
4	Company Founder	Indonesian citizen, 17 years old	Malaysian citizens or foreigners domiciled in Malaysia, 18 years old
5	Registration	Online : ahu.go.id	Online : www.ssm.com.my
6	Legal entity status	After being registered by the Ministry of Law and Human Rights and receiving proof of registration	After being registered by <i>the Registrar</i>
7	Increase in capital/shareholders	Requires change of form to PT Persekutuan modal	No need to change the form, just register with <i>the Registrar</i>
8	Reasons for dissolution	a. voluntary request from shareholders. b. the end of the specified period. c. Court decision.	a. Court decision b. voluntary request from shareholders.

		d. The Company's bankrupt assets are insufficient to pay the bankruptcy debts.	
		e. the bankrupt assets of a company in a state of insolvency and suspension of debt payment obligations; or	
		f. revocation of the company's business license.	
9	Corporate responsibility	- etting up Separate Legal Identity - rranging <i>Pierching of the corporate veil</i>	§ - etting up Separate Legal Identity f

Regulations regarding Individual Companies with the aim of improving the country's economy. It is expected that all existing regulations will be aligned so that there is no legal vacuum that causes uncertainty such as the regulation of the founder's age limit of 17 years which is contrary to the age limit for changing the form of the Company to a Capital Partnership Company where to submit a notarial deed must be at least 18 years old. In addition, it is necessary to conduct socialization related to the policy of this Individual Company considering that this form of business entity is something new, especially for MSMEs, so that it is known by the wider community, especially the MSME sector that wants to get legal entity status so that it is easier to manage credit. This will be a stimulus for the nation's economic growth.

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