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Limitation of Liability of Corporate Organs in the Establishment of a Sole Proprietorship Limited Liability Company

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Abstract. *The type of research by the author in this study is normative legal research to involves and examining applicable laws and regulations as well as other relevant legal literature, commonly referred to as secondary data, in order to address specific legal issues in accordance with the research object. The liability of a limited liability company's organs is generally limited to the shares held in the company. However, in a Sole Proprietorship Limited Liability Company, management is carried out by the same person, both as Directors and as Meeting Decision-makers under the Job Creation Law. Therefore, in practice, there are many potential conflicts of interest that cause individuals who act as both founders and managers of a Limited Liability Company to be liable for their personal assets, provided that their errors and negligence can be legally proven in the Court where the Limited Liability Company is legally registered.*

Keywords: *Company; Liability; Limited; Personal.*

1. Introduction

A limited liability company (Perseroan Terbatas) is one of the most recognized legal entities serving as a legal subject in business activities in Indonesia, alongside foundations and cooperatives. As a legal subject bearing rights and obligations, the limited liability company is characterized by the separation and/or limitation of liability imposed on its founders, which distinguishes it from other forms of business organizations.

In accordance with Law Number 40 of 2007 concerning Limited Liability Companies, the corporate organs consist of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. Each of these organs possesses specific authorities and responsibilities within the limits prescribed by the relevant provisions. The law also clearly stipulates the scope of actions that each corporate organ may or may not perform.

For instance, a director is authorized to act for and on behalf of the company both inside and outside the court as stipulated in Article 98 paragraph (3). Conversely, the director is prohibited from selling the company's assets exceeding fifty percent of its total assets without prior approval from the General Meeting of Shareholders (GMS), as mandated in Article 102 of the same law.

In the current legal dynamics, the law governing limited liability companies in Indonesia has undergone significant changes following the enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation (hereinafter referred to as the Job Creation Law). One of the fundamental amendments introduced by this law concerns the number of founders required to establish a limited liability company, which previously had to be at least two persons. Following this legal reform, however, a limited liability company may now be established by a single individual.

In the author's view, the legislature intended to provide greater flexibility and convenience for business actors who wish to conduct their business under the legal form of a limited liability company. As is well known, a limited liability company is a legal entity characterized by the separation of assets between the company and its shareholders, and by the allocation of powers and responsibilities among its corporate organs as stipulated by law.

Although the establishment of a single-member limited liability company is subject to several selective requirements aimed at encouraging the growth of micro and small enterprises, the legal principles of corporate liability generally applicable to limited liability companies also extend to single-member companies.

The enactment of the Job Creation Law, which enables individuals to establish limited liability companies, embodies a progressive spirit shared by both the legislature and business actors who benefit directly from this legal development. This reform also reflects the broader regional trend in corporate law across Southeast Asia, as seen in Singapore's Companies Act 1967 and Malaysia's Companies Act 2016 (Muhammad Faiz Aziz & Nunuk Febriananingsih, 2020).

The establishment of a single-member limited liability company, categorized as a micro or small enterprise, plays a crucial role in promoting investment and economic development. Furthermore, the existence of this legal form provides legitimacy to companies that were previously established by two shareholders but, in practice, were controlled by a single individual merely to satisfy the formal two-person requirement. However, on the other hand, the weaknesses and challenges inherent in this corporate model create potential opportunities for fraudulent acts by shareholders who exploit the limitation of liability principle to the detriment of third parties (Muhammad Faiz Aziz & Nunuk Febriananingsih, 2020).

Recently, the establishment of single-member limited liability companies has sparked considerable debate. Proponents argue that it is time for Indonesia to recognize a legal entity that can be founded by a single individual, as is the practice in many other jurisdictions. In contrast, critics contend that the regulation was drafted without sufficient precision, thereby creating the potential for new legal complications and disputes with other parties engaged in business relations with such companies (Febri Jaya, 2020).

To further examine the concept of liability and the scope of responsibility of corporate organs in the establishment of single-member limited liability companies, the author is particularly interested in analyzing the forms of accountability within such entities. This topic has become increasingly relevant, as by March 2024, a total of 3,248 single-member limited liability companies had been officially registered in the Legal Entity Administration System (AHU) of the Ministry of Law and Human Rights of the Republic of Indonesia (Kementerian Hukum Republik Indonesia, 2024).

Based on the foregoing background, the research question formulated in this article is as follows: How is the liability of corporate organs determined in the establishment of a single-member limited liability company?

2. Research Methods

The research method is an essential component of any scholarly study, describing the type of research and the approach employed in conducting scientific inquiry. Research serves as a fundamental means for the development of science and technology, aiming to reveal truth through a systematic, methodological, and consistent process. Accordingly, research involves a structured process of investigation and data analysis designed to generate valid and reliable conclusions (Soerjono Soekanto & Sri Mamudji, 2003). The purpose of research is to obtain truth from an epistemological perspective, meaning that truth must be understood within the framework of epistemology (Peter Mahmud Marzuki, 2014). This article employs a normative legal research method. In accordance with legal literature, normative legal research involves examining applicable laws and regulations, as well as other relevant legal sources, commonly referred to as secondary data, in order to address a specific legal issue (Soerjono Soekanto & Sri Mamudji, 2003). The type of research by the author in this study is normative legal research. Normative legal research, also known as library-based legal research, involves examining applicable laws and regulations as well as other relevant legal literature, commonly referred to as secondary data, in order to address specific legal issues (Seorjono Soekanto & Sri Mamudji, 2003). Legal science possesses a distinctive character, reflected in its normative nature, it's primary focus of normative legal science, as a practical discipline, is to transform existing conditions and provide solutions to both concrete and potential societal problems (Johnny Ibrahim, 2003). Legal science is a distinct discipline characterized by its normative

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nature. The primary focus of normative legal science is to transform existing conditions and offer solutions to both concrete and potential societal problems. In the law-making process, the concretization and individualization of general legal norms are linked to specific events. The age of certain legislation often creates gaps in substantive regulation. Therefore, the enforcement of such laws must continue to observe established legal principles ((Johnny Ibrahim, 2003). Since the Job Creation Law came into full effect in 2023, the author considers this regulation to be a particularly compelling subject for further study. This is especially significant because the law introduces a fundamental change regarding the parties eligible to establish a limited liability company—shifting the requirement from a minimum of two founders to just a single individual.

3. Results and Discussion

3.1. Forms of Legal Changes in Limited Liability Companies Following the Enactment of the Job Creation Law

The definition of a legal subject refers to any party or entity that holds rights and obligations (R. Soeroso, 2010). In addition to natural persons, legal entities are also recognized as legal subjects. According to Wirjono Prodjodikoro, a legal entity is a body which, alongside natural persons, is considered capable of acting within the law and possesses rights, obligations, and legal relationships with other individuals or entities (P.N.H. Simanjuntak, 2009).

A legal entity as a legal subject is based on the fiction theory (fictie theorie), as regulated in Article 2 of the Burgerlijk Wetboek. One example of a legal entity is a limited liability company (LLC), as governed by Law Number 40 of 2007 concerning Limited Liability Companies. Prior to the amendments introduced by the Job Creation Law, a limited liability company was a corporate business entity established through an agreement, conducting business activities with a share capital entirely divided into shares, and meeting the requirements set forth by applicable laws and regulations (Soedjono Dirdjosisworo, 1997).

Under the Job Creation Law, the normative definition of a limited liability company (LLC) is as follows: “A limited liability company, hereinafter referred to as the Company, is a legal entity that constitutes a capital partnership, established based on an agreement, conducting business activities with a share capital entirely divided into shares, or a single-person legal entity that meets the criteria of Micro and Small Enterprises as regulated in the legislation governing Micro and Small Enterprises.”

The definition of a limited liability company has changed under the Job Creation Law due to the introduction of a new regulation allowing an LLC to be established by a single individual, whereas previously it required a minimum of two founders. In addition to the definitional changes, the Job Creation Law also introduced

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amendments concerning the composition and number of corporate organs, which are regulated in the following new provisions:

Article 153A

1. A company that meets the criteria of micro and small enterprises may be established by a single individual.

2. The establishment of a company for micro and small enterprises as referred to in paragraph (1) shall be based on a statement of establishment made in the Indonesian language.

3. Further provisions regarding the establishment of a company for micro and small enterprises as referred to in paragraph (1) shall be regulated by Government Regulation.

Article 153B

1. The statement of establishment as referred to in Article 153A paragraph (2) shall include the purpose and objectives, business activities, share capital, and other information related to the establishment of the company.

2. The statement of establishment as referred to in paragraph (1) shall be registered electronically with the Minister using the prescribed form.

3. Further provisions regarding the content of the statement of establishment and the prescribed form as referred to in paragraphs (1) and (2) shall be regulated by Government Regulation.

Article 153C

1. Amendments to the statement of establishment of a company for micro and small enterprises as referred to in Article 153A shall be determined by the General Meeting of Shareholders (GMS) and notified electronically to the Minister.

2. Further provisions regarding the content and format of amendments to the statement of establishment as referred to in paragraph (1) shall be regulated by Government Regulation.

Article 153D

1. The Board of Directors of a company for micro and small enterprises as referred to in Article 153A shall manage the company for the benefit of the company in accordance with its purpose and objectives.

2. The Board of Directors is authorized to manage the company as referred to in paragraph (1) according to policies deemed appropriate, within the limits stipulated by this Law and/or the statement of establishment.

Article 153E

1. Shareholders of a company for micro and small enterprises as referred to in Article 153A shall be individuals.

2. A founder may only establish one company for micro and small enterprises within a one-year period.

Article 153F

1. The Board of Directors of a company for micro and small enterprises as referred to in Article 153A must prepare financial statements to ensure good corporate governance.

2. Further provisions regarding the obligation to prepare financial statements shall be regulated by Government Regulation.

Article 153G

1. The dissolution of a company for micro and small enterprises as referred to in Article 153A shall be carried out by the GMS and recorded in a statement of dissolution, which shall be notified electronically to the Minister.

2. The dissolution of a company for micro and small enterprises as referred to in paragraph (1) may occur due to:

a) a decision of the GMS;

b) expiration of the company's term of establishment as stated in the statement of establishment;

c) a court ruling;

d) revocation of bankruptcy where the company's assets are insufficient to cover bankruptcy costs;

e) insolvency of the company's assets as regulated in the Bankruptcy and Suspension of Debt Payment Law; or

f) revocation of the company's business license requiring liquidation in accordance with statutory provisions.

Article 153H

1. If a company for micro and small enterprises no longer meets the criteria as referred to in Article 153A paragraph (1), it must change its status to a regular company in accordance with applicable regulations.

2. Further provisions regarding the change of status of a company for micro and small enterprises shall be regulated by Government Regulation.

Article 153I

1. Companies for micro and small enterprises shall be granted reduced costs related to the establishment of a legal entity.

2. Further provisions regarding the cost reductions for companies for micro and small enterprises shall be regulated in accordance with laws on non-tax state revenue.

Article 153J

1. Shareholders of a company for micro and small enterprises shall not be personally liable for obligations incurred on behalf of the company and shall not be liable for company losses exceeding their shareholding.

2. The provisions referred to in paragraph (1) shall not apply if:

a) the requirements for the company as a legal entity have not been fulfilled;

b) the shareholder, directly or indirectly, in bad faith, uses the company for personal interests;

c) the shareholder is involved in unlawful acts committed by the company; or

d) the shareholder, directly or indirectly, unlawfully uses the company's assets, causing the company's assets to be insufficient to settle its debts.

The above provisions have significantly transformed the legal landscape of Limited Liability Companies (LLCs) in Indonesia, particularly as regulated under the Limited Liability Company Law. Provisions regarding LLCs are regulated in Chapter IV, Ease of Doing Business, Section Four on Limited Liability Companies, Article 111 (Munawar Kholil, 2020).

Several notable changes in LLC law are as follows (Shenti Agustini, 2022): First, the exception to the two-shareholder requirement. Traditionally, an LLC must be established by at least two legal entities based on an agreement. Under the Job Creation Law, an LLC may now include a single-member legal entity if it meets the criteria for micro and small enterprises. Consequently, any individual can establish an LLC and hold all shares independently, provided the company falls under the micro and small enterprise category. Furthermore, the amendments clarify that the two-shareholder exception also applies to companies whose shares are fully owned by the state, regional-owned enterprises, village-owned enterprises, companies managing stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other entities in accordance with the

Capital Market Law, as well as companies that qualify as micro and small enterprises.

Second, the acquisition of legal entity status. Prior to the amendment, an LLC acquired legal entity status on the date the Minister of Law and Human Rights issued a decree approving the legal entity. Following the amendment, an LLC obtains legal entity status upon registration with the Minister and receipt of the registration proof.

Third, the amount of authorized capital. The provisions regarding authorized capital have also been revised under the Job Creation Law. Previously, the minimum authorized capital was IDR 50,000,000. Currently, the amount of authorized capital for an LLC is determined by the founders of the company.

Fourth, government administrative fees for companies. Previously, fees related to government administration for limited liability companies (LLCs) were regulated by government regulations. Following the amendments, these fees are now governed by laws and regulations concerning non-tax state revenue.

Fifth, companies meeting the criteria for micro and small enterprises. The Job Creation Law introduces ten new articles specifically addressing micro and small enterprises. Under this provision, an LLC that meets the micro and small enterprise criteria may be established by a single individual. The establishment of such a company must be based on a declaration of establishment written in Indonesian and registered electronically with the Minister. Additionally, the law provides for a reduction in administrative costs for establishing micro and small enterprise companies.

The management of micro and small enterprise companies is conducted by the board of directors in accordance with the company's purpose and objectives. The board is also required to prepare financial statements to ensure good corporate governance. Founders of micro and small enterprise companies are permitted to establish only one company per year, and shareholders must be individuals. Shareholders are not personally liable for obligations incurred on behalf of the company and are not responsible for company losses exceeding their shareholding, provided that: (a) the company's legal entity requirements have been fulfilled; (b) shareholders do not act in bad faith, directly or indirectly, to use the company for personal purposes; (c) shareholders are not involved in unlawful acts carried out by the company; and (d) shareholders do not unlawfully use company assets, causing the company to be unable to settle its debts. The dissolution of micro and small enterprise companies is conducted through a General Meeting of Shareholders (GMS), formalized in a dissolution declaration, and notified electronically to the Minister. If a micro and small enterprise company no longer meets the established criteria, it is required to change its status in accordance with applicable laws and regulations.

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3.2. Limitation of Liability of Organs in Individual Limited Liability Companies Post-Omnibus Law

Legal certainty is a fundamental aspect in the development of a distinctly Indonesian legal system. Considering that the predominant legal philosophy in Indonesia follows legal positivism, all regulations are required to be codified in written form (Lili Rasjidi & Liza Sonia Rasjidi, 2012). In relation to the function of law, Mochtar Kusumaatmadja provides a broader definition of law, viewing it not merely as the collection of principles and rules governing human life in society, but also encompassing institutions and processes that actualize the enforcement of these rules in practice (Mochtar Kusumatmadja).

The legal phenomenon concerning capital owners, formally recognized as shareholders, presents several opportunities for potentially abusive legal actions, including (Try Widiono, 2013):

a. Utilizing the company as a vehicle to engage in improper legal conduct, such as treating members of the Board of Directors and the Board of Commissioners merely as “employees” of the shareholders who must comply unquestioningly.

b. Shareholders frequently encroach upon the authority of the Board of Directors and/or Board of Commissioners, effectively reducing them to mere puppets of the shareholders.

c. The widespread use of nominee share agreements to obscure the actual ownership of shares.

d. Establishing holding companies under the control of an ultimate shareholder to consolidate influence and control.

Yahya Harahap offers an explanation regarding “limited liability” as stipulated in Article 3 paragraph (1) of the Limited Liability Company Law, stating that: the company is not liable for the debts of its shareholders, and conversely, shareholders are not liable for the debts of the company; the losses borne by shareholders are limited to the value of the shares they have invested; shareholders are not personally liable to the company’s creditors beyond their investment. However, this does not preclude the possibility of shareholders being held personally liable for their own assets if they act in bad faith by exploiting the company for personal gain, or if a shareholder acts as a guarantor (borgtoch) for the company’s debts (Rachamdi Usman, 2004).

Regarding the main topic of this article, there is no distinction in the organizational structure between conventional limited liability companies and single-person limited liability companies. This can be observed from the Limited Liability Company Law, the Omnibus Law on Job Creation, and Government Regulation No. 8 of 2021, all of which do not alter the composition of corporate organs in single-person limited liability companies. Each party acting as a shareholder, director, or commissioner within the company has the potential to exploit the company for personal interests, a situation commonly referred to as a conflict of interest, which is strictly prohibited under the prevailing legislation (Febri Jaya, 2020).

However, since a Single-Person Limited Liability Company is established by only one individual, there is no separation of responsibilities between the General Meeting of Shareholders (GMS), the Board of Commissioners, and the Board of Directors. Consequently, the founder of the company can simultaneously act as the Director and conduct the General Meeting of Shareholders. In this scenario, the legal responsibility for actions taken by that individual rests entirely with them on behalf of the Single-Person Limited Liability Company.

Under the Omnibus Law on Job Creation, the shareholder of a single-person company is not liable for company losses beyond the amount of their shares. However, this provision does not apply if the company has not yet fulfilled or fails to meet the requirements of a legal entity, if the shareholder directly or indirectly acts in bad faith to exploit the company for personal gain, if the shareholder is involved in unlawful acts committed by the company, or if the shareholder unlawfully uses the company's assets, resulting in insufficient assets to cover the company's debts.

The limited liability protection afforded to an individual acting as both founder and Director of a Single-Person Limited Liability Company is not absolute for every action taken on behalf of the company. This is reaffirmed in Article 97, paragraph (3) of the Limited Liability Company Law, which states: "Each member of the Board of Directors shall be personally fully liable for the company's losses if the member is found guilty or negligent in performing their duties as referred to in paragraph (2)."

Accordingly, if the actions of an individual as both founder and Director can be proven to be guilty or negligent in the performance of their duties, that person may be held personally liable, notwithstanding the limited liability provisions under the Limited Liability Company Law. Any allegation of fault or negligence by the Director must first be examined and evaluated in proceedings before the court with jurisdiction over the company's domicile.

In essence, any determination of the Director's fault or negligence must be confirmed through a court ruling with permanent legal force (inkracht van gewijsde) to ensure legal certainty regarding the applicability of personal liability.

4. Conclusion

If the actions of an individual acting as both founder and Director of a Single-Person Limited Liability Company are proven to be guilty or negligent in the performance of their duties, that individual may be held personally liable,

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notwithstanding the limited liability provisions under the Limited Liability Company Law. Any allegations of fault or negligence must first be examined and assessed in proceedings before the court with jurisdiction over the company's domicile. Furthermore, any determination of a Director's fault or negligence must be confirmed by a court decision with permanent legal force (*inkracht van gewijsde*) to ensure legal certainty regarding the applicability of personal liability and the protection of private assets.

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