

Validity Of The Establishment Of A Limited Liability Company (PT) By One Person

Irwan Haryowardani

Study Program Ilmu Hukum, Fakultas Sosial Sains, Universitas Pembangunan Panca Budi

*Corresponding Author

Email : wanharyowardani@gmail.com

Abstract

The establishment of a limited liability company that is not made with a notarial deed, the establishment of a limited liability company is considered never to exist, because it is considered not to meet the elements of the establishment of a limited liability company, it can be a reason for third parties who have an interest to request the dissolution of the limited liability company through the District Court. The fulfillment of these material conditions has not made the institution a legal entity, if the formal requirements of a legal entity have not been met. The formal requirement is the recognition of the state or law stating that the institution is a legal entity. This research is a descriptive study that aims to find a rule of law, legal principles, and legal doctrines to answer legal issues faced by collecting materials sourced from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions or views of researchers themselves, relating to the validity of the establishment of a limited liability company (PT) by one person. The validity of the establishment of a Limited Liability Company by one person in the job creation law refers to Article 153A which states that a company that meets the criteria of Micro and small businesses can be established by 1 (one) person. After the ratification of Law Number 11 of 2020 on job creation, the exception regarding the establishment requirement in Article 109 number 5 that "companies that meet Micro and small businesses can be established by 1 (one) person, which is electronically registered with the minister and can only be established by 1 (one) within a period of 1 (one) year.

Keywords: *Validity of establishment, establishment of a limited liability company (PT) by one person, Limited Liability Company (PT)*

INTRODUCTION

Today the economy and the business world is growing rapidly, this is evidenced by the very many found business actors both legal and unincorporated status. The form of a company with the status of a legal entity is a limited liability company, hereinafter referred to as a Limited Liability Company, Cooperative, State-Owned Enterprise, Foundation. Forms of companies that are not legal entities are limited liability companies (CV), firms, individual companies (UD). The legal person (rechtsperson, legal persons, persona moralis) is a legal subject whose basic understanding is man and everything that is based on the demands of the needs of society is thus recognized by law as supporting rights and obligations. (Mulhadi, 2016) According To H.M.N. Purwosutjipto, a legal entity can be referred to as a legal entity if several conditions are met, namely: (HMN. Purwosutjipto, 2010).

1. The existence of separate assets (rights) with a specific purpose separate from personal wealth between members or allies or shareholders and the entity concerned. Strictly speaking there is a separation of wealth between the wealth of the legal entity of the company and the personal wealth of its members or allies or shareholders.
2. There are interests that are the objectives of the body in question.
3. There are several people who become administrators of the agency.

The three conditions above are material requirements for a legal entity. Of the various forms of companies in Indonesia, the form of a Limited Liability Company is the most popular

and dominant form of company. The dominance of Limited Liability Companies does not only occur in Indonesia, but also in other countries. With great dominance in Indonesia, many businesses are establishing limited liability companies. (Suparji, 2015) in a limited liability company the founders/shareholders, the Board of Commissioners and the Board of Directors have their respective rights and obligations, the Board of Directors is in charge of carrying out all the activities of the company and representing the company, both inside and outside the court, while the commissioner is in charge of conducting general and/or special supervision in accordance with the articles of association and advising the Board of Directors, and if the Limited Liability Company Is Sued by a third party at the trial, then the limited liability company is responsible, not as a person. (Ahmad Yani & Gunawan Widjaja, 2010).

As stated in Article 7 Paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies states that “the company is established by 2 (two) or more persons with a notarial deed made in the Indonesian language”. Notarial deed in Indonesian language is a formal requirement in the company to obtain legal entity status. Notarial deed of establishment of a limited liability company is a deed made before a notary public that contains information on the identity and agreement of the parties to establish a limited liability company and its articles of association. (Habib Adjie, 2013)

Establishment of a limited liability company that is not made by a notarial deed, the establishment of a Limited Liability Company is considered never existed, because it is considered not to meet the elements of the establishment of a Limited Liability Company, it can be a reason for third parties who have an interest to request the dissolution of a Limited Liability Company through the District Court. The fulfillment of these material requirements has not made the institution a legal entity, if the formal requirements of a legal entity have not been met. The formal requirement is the recognition of the state or the law stating that the institution is a legal entity. (Suparji, 2015).

An individual limited liability company can only be established for micro and small business criteria in accordance with Government Regulation Number 7 of 2021 concerning the convenience, protection, and empowerment of Cooperatives and Micro, Small, and Medium Enterprises. Microenterprise criteria are determined based on a maximum of one billion rupiah operating capital excluding land and buildings where business or annual sales of a maximum of two billion rupiah. While small businesses are determined based on business capital ownership of more than one billion rupiah excluding land and buildings where businesses or have annual sales results of more than two billion rupiah to fifteen billion rupiah. Furthermore, Article 14 paragraph (1) of Government Regulation Number 8 of 2021 mandates that further provisions regarding the Establishment, Amendment and dissolution of individual companies are regulated by Ministerial Regulation. This Permenkumham is an implementation rule that adjusts the rules of the job creation law and government regulations.

Although established by only 1 (one) person, legal liability in an individual company should follow the company in general. In an individual company, it is held limited liability, meaning that the shareholders (founders) are only responsible for the shares they own. This is stated in Article 153j paragraph (1) of the job creation law, namely “shareholders of the company for micro and small businesses are not personally responsible for the engagement

made on behalf of the company and are not responsible for the company's losses exceeding the shares owned". (Zarman Hadi, 2011) however, the shareholder (founder) becomes responsible up to his personal property, if (Article 153j paragraph (2) of the job creation law), the requirements of the company as a legal entity have not been or are not met, the shareholder in bad faith uses the company for personal interests, the shareholder is involved in illegal acts committed by the company, or the shareholder unlawfully uses the company's assets, which results in the company's assets being insufficient to pay off the company's debts. (Zarman Hadi, 2011).

As an illustration of the case of a Limited Liability Company with a statement of establishment by only 1 (one) person and meets the criteria of Micro and small businesses, so that it is valid in a legal entity. The case can be described that the Limited Liability Company is insolvent, so it cannot carry out accountability towards the workers. Since it is established by one (one) person, that all legal acts as well as losses of a Limited Liability Company pass into the responsibility of the shareholders personally. Based on the background described above, the author is interested in researching the validity of the establishment of a limited liability company (PT) by one person.

RESEARCH METHODS

This research is a descriptive study that aims to describe something in a certain area and at a certain time. Usually in this study, researchers have obtained or have a picture in the form of initial data about the problem to be studied. In descriptive research a researcher has often used theories and possibly hypotheses. (Suratman and Philips Dillah, 2015) this study aims to find a rule of law, legal principles, and legal doctrines to answer legal issues faced. (Peter Mahmud Marzuki, 2010) the method of data collection is carried out by means of library research (library research) or also called library studies which include primary, secondary and tertiary legal materials. (Suratman and Philips Dillah, 2015) after the data collected both primary and secondary then re-analyzed using qualitative analysis methods. How to analyze the data in this study by collecting materials sourced from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions or the views of the researchers themselves, relating to the validity of the establishment of a limited liability company (PT) by one person.

RESULTS AND DISCUSSION

Terms Of Establishment Of A Limited Liability Company By One Person In The Job Creation Law

Based on Article 109 number 1 of Law Number 11 of 2020 concerning Job Creation which amends Article 1 Number 1 of Law Number 40 of 2007 concerning limited liability companies, a limited liability company is a legal entity that is a capital partnership, established by agreement, conducts business activities with authorized capital which is entirely divided into shares or individual legal entities that meet the criteria for micro and small enterprises as stipulated in the legislation regarding MSEs. Referring to Government Regulation Number 8 of 2021 concerning the Authorized Capital of the company as well as registration of

Establishment, Amendment, and dissolution of companies that meet the criteria for micro and small businesses, the requirement for the establishment of a Limited Liability Company by one person can only be established by business actors with UMK criteria. If it does not meet the UMK criteria, business actors can only register as a Capital Partnership Limited Liability Company, as follows :

1. Indonesian citizens at least 17 (seventeen) years old and legally capable;

Determining the adult age limit of a person is important because it will determine whether or not someone is legitimate to act in legal acts and the ability of someone to do legal acts. The jurisprudence of the Supreme Court states that generally the adult criterion is stated to be 17 (seventeen) years old, because at that age the person concerned is considered an adult and can be responsible for himself and his actions. At the age of 17 years, the person concerned is eligible to have a National Identity Card (KTP) as a personal identity, by having an ID card, the teenager concerned can act alone to do legal actions, including opening a savings account and doing other legal actions at the bank. Article 330 of the Civil Code states that a person's maturity is when he is 21 years old or married. Therefore, the age limit of 17 years is only for making agreements to do legal actions to open an account and do other legal actions at the bank, while to do other legal actions bound by the age limit of 21 years or married. (UB Zaelani, 2012)

2. Make a statement of establishment in Indonesian;

The terms of establishment of a limited liability company are based on Article 109 point 5 of the job creation law which contains new article 153A paragraph (2) of the Limited Liability Company Law, where the establishment of an individual Limited Liability Company is sufficient to make a statement of establishment in Indonesian, which contains the purposes and objectives, business activities, authorized capital, and other information relating to the establishment of a Limited Liability Company.

3. Fill out a statement of establishment of an individual company, which contains data;

- a. Name and domicile of individual company;
- b. Period of establishment of individual company;
- c. Purpose and objectives and business activities of the individual company;
- d. Total authorized capital, issued capital, paid-up capital, nominal value of shares and number of shares;
- e. Data of founders, shareholders and directors of individual companies (Full Name, Place and date of birth, occupation, residence, population identification number, and Taxpayer Identification Number);

Principles Of Establishment Of A Limited Liability Company

The principles of the establishment of a limited liability company contained in Article 36 to Article 56 of the Commercial Code are very lagging behind and can no longer be used in line with the development of economic life. Even in the country of origin of the provisions of this commercial code, namely the Netherlands, the provisions on *Naamloze Vennootschap (N.V.)* has long undergone changes according to the needs of the Times. (Sentosa Sembiring, 2017) The Limited Liability Company Law has contained the principles of a modern Limited Liability Company system that is expected to meet the needs and demands of the Times, which include:

1. The principle of shareholder accountability (piercing the corporate veil)

The principle of responsibility of the company's shareholders, which is limited to the amount of shares owned, seems to be identical to the existence and understanding of the company itself. Even the principle of limited liability is what is the main feature that distinguishes the company from other forms of companies. Although the principle of limited liability is still accepted, but the times have shifted it to be not absolute anymore. Where in certain circumstances it has also been widely accepted the principle of piercing the corporate veil, which opens the possibility of the company's shareholders being asked for greater responsibility than just the size of the shares they own. This means that here the shareholders of the company can be held personally liable (including personal property) for losses suffered by the company, if certain circumstances (certain conditions) are fulfilled that are stipulated by the laws and regulations governing them. The Limited Liability Company Law still essentially recognizes the principle of limited liability, but on the other hand the Limited Liability Company Law also recognizes the principle of piercing the corporate veil.

2. The principle of responsibility and the ability of the board (fiduciary duties)

Where previously the company tended to be owned limited by one or a few shareholders only with direct access to the control of the company's activities through equipment position as a board of directors and/or Commissioners. The role of the management in a modern company, especially the role of the Board of Directors, is very important because all of the company's operational activities are in the hands of the Board of directors who are supervised by the commissioners. And considering that the management of the company is not a shareholder or at least not a majority shareholder, the members of the board of directors are not only required to pay attention to the interests of the company, but more than that are also required to carry out their duties in good faith and full sense of responsibility.

3. Protection for minority shareholders (personal rights and derivative action)

The interests of shareholders of a company can essentially be viewed from 2 (two) angles, namely:

- a. Interests of shareholders as a private.
- b. Interests of shareholders as part of the company.

4. The principle of protection for the interests of creditors (capital maintenance doctrine)

In general, it can be said that the capital of a company includes share capital (shares capital) derived from payments for the acquisition of shares by shareholders and loan capital (loan capital) which is a loan from outside parties or from the shareholders themselves. Both are referred to as creditors. The relationship between a modern company and creditors is very closely intertwined, because without a capital loan from creditors, a company will meet capital difficulties in order to carry out its business activities. Meanwhile, the position of creditors to the company is quite vulnerable, because it only relies on the company's assets as security for the return of its claims.

5. Principles of disclosure

As previously stated that modern companies are characterized by the characteristics:

- a. The management of the company is carried out by professionals independent of shareholders (duty of skill and care);
- b. The number of shareholders is growing (some even owned by the public as in public companies);
- c. The increase in creditor involvement is in line with the development of the company's role as a capital raising mechanism.

CONCLUSION

The validity of the establishment of a limited liability company by one person in the job creation law refers to Article 153A which states that companies that meet the criteria of Micro and small enterprises can be established by 1 (one) person. After the ratification of Law Number 11 of 2020 concerning job creation, the exception regarding the establishment requirements in Article 109 number 5 that “companies that meet Micro and small businesses can be established by 1 (one) person, which is registered electronically to the minister and can only be established in a number of 1 (one) within a period of 1 (one) year.

REFERENCES

- Mulhadi, *Hukum Perusahaan Bentuk-Bentuk Badan Usaha Di Indonesia*, Raja Grafindo Persada, Jakarta, 2016.
- HMN. Purwosutjipto, *Pengertian Pokok Hukum Dagang*, jilid 3, Djambatan, Jakarta, 2010.
- Suparji, *Transformasi Badan Hukum*, UAI Press, Jakarta, 2015.
- Ahmad Yani & Gunawan Widjaja, *Perseroan Terbatas*, Raja Grafindo Persada, Jakarta, 2010.
- Habib Adjie, *Kebatalan dan Pembatalan Akta Notaris*, Refika Aditama, Bandung, 2013
- Zarman Hadi, *Karakteristik Tanggung Jawab Pribadi Pemegang Saham, Komisaris dan Direksi dalam Perseroan Terbatas*, UB Press, Malang, 2011
- Brawijaya Zaelani, *Batas Usia Seseorang Dalam Melakukan Perbuatan Hukum Berdasarkan Peraturan Perundang-Undangan*, PT Citra Aditya Bakti, Bandung, 2012
- Sentosa Sembiring, *Hukum Dagang*, Citra Aditya Bakti, Bandung, 2017.
- Kitab Undang-Undang Hukum Perdata.
- Undang-Undang Nomor 40 Tahun 2017 tentang Perseroan Terbatas