

## Limited Liability Principle to One-Tier System in Individual Company

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### ABSTRACT

The purpose of this study is to describe and analyze the characteristics of the one-tier system in an individual company following the enactment of Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) and to analyze the legality of the principle of limited liability to the one-tier system in an individual individual company after the enactment of Law Number 11 of 2020 on Job Creation. The method used in this legal research is a normative method with a statute approach. Characteristics that can be seen from the one-tier system in this individual company includes, inter alia the establishment, capital, organs, shareholders and responsibilities. Meanwhile, the legality of the limited liability principal of the one tier system in an individual company can be seen in Article 153J paragraph (1) of the Job Creation Law, where it clearly states that principal. However, the limited liability system can only be apply to the one tier system in an individual company, as long as it obliges to the Article 153J paragraph (2) of the Job Creation Law.

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## **INTRODUCTION**

National development is a reflection of the desire to continuously improve the welfare and prosperity of the Indonesian people in a fair and equitable manner, as well as to improve people's lives and to administrate an advanced and democratic state based on Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>1</sup> To actualize these desires and goals, the state needs to pay attention to several sectors, one of which is the economic sector. In the economic field, the targets of development are, among others, are the creation of an independent and reliable economy, with an increasement of a dirtributed prosperity for the people, fairly high growth, and a national stability. In order to achieve this target, various supporting facilities are needed, including a legal order that encourages, mobilizes, and controls various developments in the economic field.<sup>2</sup>

In Indonesia, the economy is structured as a joint effort based on the principle of kinship. This is as regulated in Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the “1945 Constitution”). Article 33 paragraph (4) of the 1945 Constitution further stipulates that the national economy is organized based on an economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity. The national economy is a system used by a country to allocate its resources both to individuals and organizations in that country. The economic democraton that are regulated in the Artice 33 paragraph (4) of the 1945 Constitution is need to be supported by a strong economic body in order to visualize the prosperity of the people.

To deal with the development of the world economy, the state needs to increase the development of the national economy and at the same time provide a solid foundation for the business world. Nowadays, the development of the national economy shows a direction that are increasingly integrated with regional and international economies that can both support and have an unfavorable impact, whereas on the other hand, the development of the national economy is always moving fast with increasingly complex challenges.<sup>3</sup>

One of the pillars of national economic development, namely a limited liability company (hereinafter referred to as a “company”) needs to be given a legal basis to further trigger national development which is structured as a joint effort based on the principle of kinship.<sup>4</sup> The Company is one of the most popular forms of legal entity that is chosen by business people in Indonesia compared to the other legal entities and non-legal entities. In addition, as the purpose of the company can be used as a medium or intended to assist and drive the activities of the national economy, without being limited to entrepreneurs or business actors and cannot be separated from the needs of a business. One form of business chosen by business actors is the micro and small businesses.

Micro and small businesses existence are very important and useful at this point of time. For example, with the existence of micro and small businesses it can create new jobs and expand employment, therefore it can absorb new workers, and in the end the number of unemployment can be reduced. In addition, micro and small businesses can also increase the per capita income of a region. Based on the latest data from the Ministry of Cooperatives and Small and Medium

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<sup>1</sup> General Elucidation of Law of the Republic of Indonesia Number 8 of 1995 concerning Capital Market, State Gazette of the Republic of Indonesia of 1995 Number 64.

<sup>2</sup> Ibid.

<sup>3</sup> Marulak Pardede, *Bank Liquidation and Customer Protection*, (Pustaka Sinar Harapan 1998), Jakarta. 1.

<sup>4</sup> Elucidation of Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia of 2007 Number 106.

Enterprises, it shows that in terms of labor absorption, micro, small and medium enterprises are sectors that absorb a large number of workers, which in 2018 absorbed 117 million workers or 97 percent of the workforce. absorb the workforce of the business world.<sup>5</sup> Moreover, in 2018 micro, small and medium enterprises contributed 61.07 percent of Indonesia's total GDP, which was 8.573 trillion out of a total of 14,038 trillion.<sup>6</sup>

From the example above, it can be seen how micro and small businesses have a very big role in improving the national economy. The increasement in the national economy is directly proportional to the welfare and prosperity of the people, which means that the more the national economy increases, the welfare and prosperity of the people will also increase. Unfortunately, in Indonesia itself, to do business, including doing business in micro and small businesses, still faces various obstacles. Regulations and institutions are the main obstacles in addition to fiscal, infrastructure and human resource barriers, in which these regulations do not support the creation and development of businesses, and even tend to limit them.<sup>7</sup> This is clearly a serious problem for the future. As explained above, micro and small businesses have a big role in improving the national economy. With the inhibition of micro and small businesses caused by regulations, it can also hinders the improvement of the national economy.

Legal reforms are needed for every country to be able to compete and make changes that can benefit the country, without legal reforms that keep up with this era, the country will only run in place for development and other several sectors in the country. With the conditions as described above, the current government has reformed the law by enacting Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the "Job Creation Law"). The Law was established with the aim to:<sup>8</sup>

- a. Creating and increasing job opportunities by providing convenience, protection, and empowerment to cooperatives and MSEs as well as national industry and trade as an effort to be able to absorb Indonesian workers as widely as possible while taking into account the balance and progress between regions in the national economic unit;
- b. Ensuring that every citizen gets a job, and gets fair and proper remuneration and treatment in an employment relationship;
- c. Make adjustments to various aspects of regulation related to alignments, strengthening, and protection for cooperatives and MSEs and national industries; and
- d. Adjusting various regulatory aspects related to improving the investment ecosystem, facilitating and accelerating national strategic projects oriented to national interests based on national science and technology guided by the ideology of Pancasila.

From this description of the purpose of the establishment of the Job Creation Law, it is hoped that it can overcome obstacles regarding regulations that are considered not to support business development, especially micro and small businesses. The Job Creation policies and strategic steps outlined in this law can be regarded as one of the government's efforts to encourage the development of micro, small and medium enterprises. With the better development of micro, small and medium enterprises, it can improve the national economy so that it can also improve the welfare of the community.

With the enactment of the Job Creation Act, it provides a new breakthrough for the convenience, empowerment and protection of micro, small and medium enterprises. The new breakthrough can

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<sup>5</sup> Antonius Purwanto, Portraits and Challenges of MSMEs in Indonesia, <https://kompaspedia.kompas.id/baca/paparan-topic/potret-dan-tantangan-umkm-di-indonesia>, September 16, 2020.

<sup>6</sup> Ibid.

<sup>7</sup> Elucidation of Law Number 11 of 2020 concerning Job Creation, State Gazette of the Republic of Indonesia of 2020 Number 245.

<sup>8</sup> Article 3 of Law Number 11 of 2020 concerning Job Creation, State Gazette of the Republic of Indonesia of 2020 Number 245.

be seen in Chapter VI, the fifth part concerning Limited Liability Companies, Article 109 of the Job Creation Law, where in that article amends several provisions of the articles in Law Number 40 of 2007 (hereinafter referred to as UUPT). Changes in several provisions of these articles gave birth to a new rule regarding companies that meet the criteria for micro and small businesses in which the company can be established only by 1 (one) person,<sup>9</sup> and can be based on a statement of establishment made in Indonesian<sup>10</sup>. This company is called a private company. This provision is clearly different from the provisions for establishing an ordinary company that has been known so far.

The Company Law, before being amended based on Article 109 of the Job Creation Law, did not specifically regulate limited liability companies that meet the criteria for micro and small businesses. In addition, the company is established by 2 (two) or more persons with a notarial deed drawn up in the Indonesian language.<sup>11</sup>

The concept of a sole proprietorship is actually not new to several countries in the world with the terms Single-Member Private Limited Liability Company in the EU and UK, Dirian Berhad (sdn Bhd) in Malaysia, and Private Limited Company (Pte Ltd) in Singapore.<sup>12</sup> In fact, interestingly, countries such as Uganda, Ethiopia, and Pakistan already known and have an individual company regulations.<sup>13</sup> However in many cases, sole proprietorship does not have the limited liability system that Indonesia applies right now, but rather an unlimited liability system which means that any losses suffered, or debt incurred, by the business will be born by the owner (individual) personally.<sup>14</sup> This is of course different than in the individual company concept that has limited, separated, liability with its owner and the two liability regime give rise to two different legal consequences that may be resulted from creating an individual company.

Furthermore, this individual company is one-tier in nature, where 1 (one) single shareholder acts simultaneously as a director or management of the company and the board of commissioners or supervision of the company.<sup>15</sup> Concepts like this are new to Indonesia and different from those stipulated in the Company Law. With a new concept like this, there will be many questions that arise, one of which is what about the principle of limited liability of shareholders in a one-tier individual company.

As a result of this, the authors research questions in this paper are (1) to what extent is limited liability applied in individual company under Indonesian law and (2) how is the concept of individual company under Indonesian law compare to the concept of sole proprietorship in other countries? Based on the description above, it encourages the authors to conduct a research with the title of "**Principles of Limited Liability to One-Tier System in Individual Companies.**"

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<sup>9</sup> Article 153A paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia of 2007 Number 106.

<sup>10</sup> Article 153A paragraph (2) of Law Number 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia of 2007 Number 106.

<sup>11</sup> Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia of 2007 Number 106.

<sup>12</sup> Muhammad Faiz Aziz and Nunuk Febriananingsih, Realizing a Limited Liability Company (PT) for Micro and Small Enterprises (UMK) through the Draft Law on Job Creation, Rechts Vinding Journal, Volume 9 Number 1, April 2020. 96.

<sup>13</sup> Ibid.

<sup>14</sup> Stephen J. Skripak, Fundamentals of Business (VT Publishing 2018), Virginia. 109.

<sup>15</sup> Tedy, Getting to Know the Concept of Sole Proprietorship in Indonesia, <https://www.kemenkumham.go.id/berita/menkenal-concept-perseroan-perseorangan-di-indonesia>, February 26, 2021.

## **METHODS**

In legal research regarding the "**Principle of Limited Liability to One-Tier System in Individual Companies**" the author uses a normative method of legal research. Normative research or library research is legal research conducted by examining library materials or secondary data.<sup>16</sup> According to Ronny Hanitijio Soemitro as quoted by Soejono et al that normative research or which is also called as doctrinal legal research is usually only used a secondary data sources, namely legislation, court decisions, legal theory and opinions of leading scholars.<sup>17</sup> As also emphasized by Achmad Ali that this jurisprudential approach or legal normative study focuses its study by viewing the law as a complete system that includes a set of legal principles, legal norms and legal rules (written and unwritten).<sup>18</sup>

## **RESULTS AND DISCUSSION**

### **1. Characteristics of an Individual Company as a One-Tier System Based on Law Number 11 of 2020 concerning Job Creation.**

Since the enactment of Law Number 11 of 2020 concerning Job Creation and the issuance of Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, it has been known for company in Indonesia that adheres to one-to-one tier system, where the company is an individual company and as a one-tier system, which has its own characteristics, namely as follows:

#### **a. Definition**

Based on the Job Creation Law or its implementing regulations, it is not clearly regulated on the definition of an individual company. Article 1 paragraph (1) PP 8 of 2021 does not clearly mention individual companies but provides the definition of Limited Liability Company, hereinafter referred to as Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with an authorized capital that is entirely divided into in shares or individual legal entities that meet the criteria for micro and small businesses as regulated in the laws and regulations concerning micro and small businesses. This definition of a limited liability company is based on a new definition as amended in the Article 1 number 1 of the Company Law. Based on the new definition, There are 2 (two) types of companies, namely a commonly known companies and an individual companies that meet the criteria for micro and small businesses.

Companies that are a made by a capital partnerships are established by 2 (two) or more persons, while individual companies that meet the criteria for micro and small businesses are established by only 1 (one) person. An individual company is an company in the form of a legal entity with limited liability established by one person and led by one director.<sup>19</sup> Beihui Mao (2012) states that a Single-Member Private Limited Liability Company (SMC) is a limited liability company that has one shareholder, namely an individual (natural person) or a legal person (legal person).<sup>20</sup>

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<sup>16</sup>S. Soekanto & S. Mamudji. Normative Legal Research A Brief Overview (Raja Grafindo Persada 2007) Jakarta. 13.

<sup>17</sup>S. Soekanto, Introduction to Legal Research, third edition (UI-Press 1986), Jakarta. 52.

<sup>18</sup>Irwansyah, Selected Legal Research Methods & Practice of Article Writing (Mirra Buana Media 2020) Sleman. 133

<sup>19</sup> Muhammad Faiz Aziz and Nunuk Febriananingsih, On Creating ....., Op.Cit., 95.

<sup>20</sup> Ibid.

## **b. Establishment**

In Article 153A of the Company Law, it has specifically regulated regarding the establishment of companies that meet the criteria for micro and small businesses are as follows:

- (1) Companies that meet the criteria for Micro and Small Enterprises can be established by 1 (one).
- (2) The establishment of the Company for Micro and Small Enterprises as referred to in paragraph (1) is carried out based on a statement of establishment made in the Indonesian language.
- (3) Further provisions regarding the establishment of the Company for Micro and Small Enterprises Micro and Small Enterprises shall be regulated in a Government Regulation.

The statement of establishment as referred to in Article 153A paragraph (2) contains the aims and objectives, business activities, authorized capital and other information related to the establishment of the company.<sup>21</sup> Furthermore, provisions referred to in Article 153A paragraph (3) and Article 153B paragraph (3), are Government Regulation Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses (hereinafter called PP 8 of 2021). In Article 2 paragraph (1) and Article 6 paragraph (1) (2) PP 8 of 2021 it is regulated regarding the establishment of an individual company as follows:

### Section 2

- (1) Companies that meet the criteria for micro and small businesses consist of:
  - a. Company established by 2 (two) or more persons; and
  - b. An individual company established by 1 (one) person.

### Article 6

- (1) An individual company is established by an Indonesian citizen by filling out a Statement of Establishment in Indonesian.
- (2) Indonesian citizens as referred to in paragraph (1) must meet the following requirements:
  - a. Minimum age of 17 (seventeen) years; and
  - b. Legal Capacity

The statement of establishment as referred to in Article 6 paragraph (1) is registered electronically to the Minister<sup>22</sup> by filling in the form, which contains<sup>23</sup> :

- a. The name and domicile of the individual company;
- b. The period of establishment of an individual company;
- c. The aims and objectives as well as the business activities of the individual company;
- d. Nominal value and number of shares;
- e. Address of individual company; and
- f. Full name, place and date of birth, occupation, place of residence, identification number, and tax identification number of the founder as well as director and company holder.

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<sup>21</sup> Article 153B paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies, State Gazette of the Republic of Indonesia of 2007 Number 106.

<sup>22</sup> Article 7 paragraph (1) Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, State Gazette of the Republic of Indonesia Year 2021 Number 18.

<sup>23</sup> Article 7 paragraph (2) Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, State Gazette of the Republic of Indonesia Year 2021 Number 18.

Individual companies obtain legal entity status after being registered with the Minister and after that obtained an electronic registration certificate.<sup>24</sup> An individual company that has obtained the status of a legal entity as referred to above is announced by the Minister on the official website of the directorate general that carries out duties and functions in the field of general legal administration<sup>25</sup> which is the fulfillment of the principle of publicity.

Based on the description above, it can be seen the order to establish an individual company is simpler than establishing an ordinary company. Companies are usually established by notarial deed in Indonesian, while individual companies are established with a statement of establishment in Indonesian. With no need for a notarial deed to establish an individual company, from an economic point of view, this is very helpful for micro and small business entrepreneurs. This proves that through the Job Creation Act, it provides convenience for business actors to start businesses in the micro and small sector with the aim of being able to create many jobs so that they can also contribute a lot to the improvement of the national economy.

Based on Article 153E paragraph (2) of the Company Law, it is regulated that the establishment of a company can only establish a limited liability company for micro and small businesses in the amount of 1 (one) company for micro and small businesses within 1 (one) year. This is so as not to make micro and small business actors take advantage of this facility in bad faith and have the potential to commit acts against the law.<sup>26</sup> Moreover to prevent monopolistic actions carried out by micro and small business actors.

### **c. Company Capital**

The Company must have an authorized capital. This also applies to individual companies. The company's authorized capital for micro and small businesses comes from the separate assets of the founders. Regarding the amount of authorized capital, it is not clearly regulated both in the Limited Liability Company Law which has been amended by the Job Creation Law and in PP 8 of 2021 as its implementing regulation. In Article 32 of the Company Law paragraph (2) and Article 3 paragraph (2) of PP 8 of 2021 it is only explained that the amount of authorized capital of the company is determined based on the decision of the founder of the company. Furthermore, the authorized capital of the company must be issued and fully paid up at least 25% (twenty five percent) as evidenced by a valid proof of deposit<sup>27</sup> and must be submitted electronically to the Minister no later than 60 (sixty) days from the date of filling in the statement of establishment for individual companies.<sup>28</sup>

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<sup>24</sup> Article 6 paragraph (3) Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, State Gazette of the Republic of Indonesia Year 2021 Number 18.

<sup>25</sup> Article 6 paragraph (4) Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, State Gazette of the Republic of Indonesia Year 2021 Number 18.

<sup>26</sup> Muhammad Faiz Aziz and Nunuk Febriananingsih, *Realizing .....*, Op.Cit., 103.

<sup>27</sup> Article 4 paragraph (1) Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, State Gazette of the Republic of Indonesia Year 2021 Number 18.

<sup>28</sup> Article 4 paragraph (2) letter b Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, State Gazette of the Republic of Indonesia Year 2021 Number 18.

In Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (hereinafter referred to as the “MSME Law”) which has been amended based on Article 87 of the Job Creation Law, it is also not clearly regulated regarding capital for micro, small and medium enterprises. Article 6 of the MSME Law only explains the criteria for micro, small and medium enterprises, which reads as follows:

- (1) The criteria for micro, small and medium enterprises may include business capital, net worth indicators, annual sales results, or investment value, incentives and disincentives, application of environmentally friendly technology, local content, or the number of workers in accordance with the criteria for each business sector.
- (2) Further provisions regarding the criteria for micro, small and medium enterprises are regulated in a Government Regulation.

The Government Regulation referred to in paragraph (2) above is Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises (hereinafter referred to as “PP 7 of 2021”). Based on Article 35 paragraph (1) and paragraph (2) of PP 7 of 2021 it is stated that micro, small and medium enterprises are grouped based on the criteria for business capital or annual sales proceeds used for the establishment or registration of business activities. Business capital must be a personal capital and loan capital in order to run business activities. Article 35 paragraph (3) of PP 7 of 2021 stipulates that the criteria for working capital consist of:

- a. Micro-enterprises have a business capital of up to a maximum of Rp. 1,000,000,000.00 (one billion rupiah) excluding land and buildings for business premises;
- b. Small business has a business capital of more than Rp. 1,000,000,000.00 (one billion rupiah) up to a maximum of Rp. 5,000,000,000.00 (five billion rupiah) excluding land and building for the place of business; and
- c. Medium-sized businesses have a business capital of more than Rp.5,000,000,000.00 (five billion rupiah) up to a maximum of Rp.10,000,000,000.00 (ten billion rupiah) excluding land and buildings for business premises.

In addition to the criteria for business capital, micro, small and medium enterprises are also grouped based on sales results as stipulated in Article 35 paragraph (5) of PP 7 of 2021 which regulates the following:

- a. Micro-enterprises have an annual sales of up to a maximum of Rp. 2,000,000,000.00 (two billion rupiah);
- b. Small businesses have an annual sales of more than Rp. 2,000,000,000.00 (two billion rupiah) up to a maximum of Rp. 15,000,000,000.00 (fifteen billion); and
- c. Medium-sized businesses have an annual sales of more than Rp. 15,000,000,000.00 (fifteen billion rupiahs) up to a maximum of Rp. 50,000,000,000.00 (fifty billion rupiahs).

In terms that business actors have already carry out business activities before this government regulation comes into force, the provision of facilities, protection, and empowerment is given to micro, small and medium enterprises that meet the criteria for annual sales results as referred to above. The nominal value of the criteria based on the criteria for working capital or annual sales results can be changed in accordance with economic developments.

#### **d. Organs of Company**

There is something that needs to be observed from Article 7 paragraph (2) letter g of PP 8 of 2021 as written, "full name, place and date of birth, occupation, place of residence, identification number, and tax identification number of the founders as well as directors and shareholders of



individual companies." That the founder of an individual company can be a director as well as a shareholder. Thus, the organs in an individual company only consist of shareholders and directors. This characteristic is clearly different from the company organs regulated in the Company Law.

The Indonesian limited liability company legal system based on Article 1 point 2 of the Company Law, recognizes 3 (three) organs of limited liability companies, each of which is autonomous, namely the General Meeting of Shareholders (RUPS), the Board of Directors and the Board of Commissioners.<sup>29</sup> This legal system is usually used by countries with a Continental European legal tradition. Where the common law legal system does not adhere to such a system, where there are 2 (two) organs of a limited liability company, namely: the General Meeting of Shareholders or the Board of Directors and the Board of Directors.<sup>30</sup> Some of the models adopted in countries in the world are divided into:<sup>31</sup>

1. *One-tier Board Structure-All Executive Board.* In such a structure, each member of the board of directors of a limited liability company is also a member of the management. Many private and family companies, groups, or relatives that are stipulated in the Company Law are called limited liability companies use such structure.
2. *One-Tier Board-Majority Executive Board.* In this structure, outside directors – in the Continental Law tradition such as Indonesia – are called the board of commissioners, they are members of the board of directors but are a minority. Variations for this type can be a dualistic Chief Executive Officer or CEO. Here Charmain or the board of commissioners or the board of commissioners at the same time serves as CEO or a non-dualistic structure is created.
3. *One-Tier-Majority Outside Board.* In this structure, the majority of the members of the organs of the limited liability company come from outside the shareholders and even professionals. They are directors who under Indonesian limited liability law are now known as non-executive directors with independent commissioners. Variations of this structure can be dualistic or non-dualistic CEOs.
4. *Two-tier Board System.* In this structure the members of the organs and the executive management team are separated and differentiated. In a two-tier board structure, the organs of the Board of Directors and the Board of Commissioners are clearly separated, in addition to the General Meeting of Shareholders as the holder of power or authority that is not given to the board of directors and the board of commissioners. This structure is currently followed by the UUPT

The concept of an individual company that was made from the formation of the Job Creation Act is more often used in countries that adhere to the Common Law legal system. Individual companies adhere to the concept of a one-tier system, in which the company is run by 1 (one) organ, namely the board of directors or directors who simultaneously carry out the management and supervision functions, while the limited liability company under the Company Law adheres to the concept of a two-tier system, there is an organ that manages the company, namely the board of directors, and there is an organ that performs supervision (board of commissioners).<sup>32</sup>

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<sup>29</sup> Nindyo Pramono, Comparison of Limited Liability Companies in Several Countries, Scientific Writing Activities of the Center for Research and Development of the National Legal System National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, 2012. 3-4.

<sup>30</sup> Ibid.

<sup>31</sup> Nindyo Pramono, PT Public Law and Capital Market, (Andi Offset 2013) Yogyakarta. 144-145.

<sup>32</sup> Taufik, Business Entities, PT & PT UMK Post UUCK, Seminar on the Latest Regulations in the Notary Sector Related to Law Number 11 of 2020 concerning Job Creation, SKA Co-Ex Pekanbaru, 29 March 2021. 26.

As explained in Article 1 paragraph (6) of the Company Law, the Board of Commissioners is the Company's Organ that are in charge of carrying out general and/or specific supervision in accordance with the articles of association and providing advice to the Board of Directors. Even though individual companies adhere to the concept of a one-tier system, it is possible to appoint commissioners as supervisors of the company if needed.<sup>33</sup>

#### **e. Shareholders and their responsibilities**

A legal entity can legally own one or more shares from the company can only applies to companies that have been known so far and does not apply to individual companies. Shareholders for individual companies can only be owned by natural persons, not legal entities (*recht persons*). What is meant by "individual company" is a person who is capable to carrying out legal actions as stipulated in the Civil Code. An individual company may be owned by one shareholder. This is different from the company that has been known so far, where the company cannot be owned by one shareholder. In certain circumstances, a company that has been known so far can be owned by one shareholder as stipulated in Article 7 paragraph (5) of the Company Law which reads as follows:

After the company has obtained the status of a legal entity and the shareholders have become less than 2 (two) persons, within a maximum period of 6 (six) months as of the said situation, the shareholders concerned must:

- a. transfer some of its shares to another person; or
- b. the company issues new shares to others.

In the event that the period as referred to in paragraph (5) has been exceeded, the shareholders will remain less than 2 (two) shareholders personally responsible for all engagements and losses of the company. Talking about shareholders, it will be related to shareholder responsibilities. As it is known that related to the principle of limited liability or *limitatief aansprakelijkheid* is one of the very fundamental things in company law.<sup>34</sup> The principle of limited liability or *limitatief aansprakelijkheid* is a condition where the shareholders or *aandeelhouder* of a company are only responsible for the number of shares that they have in that company.<sup>35</sup>

Either in an individual company that adheres to a one-tier system or a limited liability company that has a two-tier system within the company, this is commonly known in the Company Law, that they has the same principle of responsibility, namely that the shareholders of the company are not personally responsible for the engagement made on behalf of the company. the company and is not responsible for the company's losses that exceed the shares owned. This provision is regulated in Article 3 paragraph (1) of the Company Law which states that "The shareholders of the Company are not personally responsible for the engagements made on behalf of the Company and are not responsible for the Company's losses in excess of the shares owned."

Where this is emphasized in the Elucidation of Article 3 paragraph (1) of the Company Law which states that "The provisions in this paragraph emphasize the characteristics of the Company that shareholders are only responsible for the amount of the deposit for all the shares they own and do not include their personal assets." and Article 153J paragraph (1) of the Job Creation Law which states that "The shareholders of the Company for Micro and Small Enterprises are not personally

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<sup>33</sup> Ibid.

<sup>34</sup> Nindyo Pramono, Comparison of Limited Liability Companies in Several Countries' (2012) Scientific Writing Activities Center for Research and Development of the National Legal System National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, Op.Cit., p. 15.

<sup>35</sup> Ibid.

responsible for the engagements made on behalf of the Company and are not responsible for the Company's losses in excess of the shares owned."

**f. The obligation to change the form into a limited liability company**

As explained above, the existence of this individual company is specifically for micro and small businesses. Article 153H of the Company Law regulates the provisions of an individual company that must change its status to a company, which reads as follows:

- (1) In the event that the company for micro and small businesses no longer meets the criteria for micro and small businesses as referred to in Article 153A, the company must change its status to a company as referred to in the provisions of the applicable laws and regulations.
- (2) Further provisions regarding the change of company status for micro and small businesses to companies are regulated in a government regulation.

Furthermore, Article 9 of PP 8 of 2021 regulates as follows:

- (1) An individual company must change its legal entity status to a company if:
  - a. Shareholders become more than 1 (one) person; and/or
  - b. Does not meet the criteria for micro and small businesses as stipulated in the provisions of the legislation regarding micro and small businesses.
- (2) An individual company before becoming a company as referred to in paragraph (1) changes its status through a notarial deed and is registered electronically to the minister.
- (3) The change in status as referred to in paragraph (2) is carried out in accordance with the provisions of the legislation regarding the company.

**g. Dismissal of individual company**

Based on the provisions of Article 153G paragraph (1) of the Company Law and Article 13 paragraph (1) of PP 8 of 2021, the dismissal of an individual company is determined by the decision of the shareholders of the company which has the same legal force as the general meeting of shareholders (GMS), which is stated in the statement of dismissal and has to be notified electronically to the minister.

Furthermore, Article 153G paragraph (2) of the Company Law and Article 13 paragraph (2) of PP 8 of 2021 stated the reasons for the dismissal of the company are due to:

- a. Based on the decision of the shareholders of the individual company which has the same legal force as the general meeting of shareholders;
- b. The period of establishment specified in the statement of establishment or amendment thereof has expired;
- c. Based on a court order;
- d. With the revocation of bankruptcy based on a decision of a commercial court that has permanent legal force, the bankruptcy estate of an individual company is not sufficient to pay the bankruptcy costs;
- e. Bankrupt assets of individual companies that have been declared bankrupt are in a state of insolvency as regulated in the law concerning bankruptcy and suspension of debt payment obligations; or
- f. The revocation of the business license of an individual company, thus requiring the individual company to liquidate by filling out a statement of dissolution.

In the event that the dissolution occurs based on the provisions as referred to in Article 13 paragraph (2) letter a, letter b and letter d, the shareholders appoint a liquidator and if the shareholders do not appoint a liquidator, the directors will act as liquidators.

## **2. Legality of the Limited Liability Principle to an individual company as a one-tier system under Indonesian law**

Speaking of limited liability companies, both well-known limited companies and individual companies, must discuss about legality. According to the Big Indonesian Dictionary (KBBI), legality is a legal matter; validity,<sup>36</sup> therefore the legality of the company can be defined as a legal matter (state) of a company; or the validity of a company. The legality of a company is very important to pay attention to. The legality of the company is the identity what certifies a company based on the applicable laws and regulations, whereas the company will be protected.

As explained above, the principle of limited liability still applies to the individual companies, this is explained in the Article 153J paragraph (1) of the Company Law. This can only be valid as long as it fulfills several requirements as described in Article 153J paragraph (2) of Job Creation Law, where the provisions as referred to in paragraph (1) do not apply if:

- a. The requirements of the Company as a legal entity have not been or are not met;
- b. The shareholder concerned, either directly or indirectly in bad faith, uses the Company for personal gain;
- c. The shareholder concerned is involved in unlawful acts committed by the Company; or
- d. The shareholders concerned, either directly or indirectly, illegally use the Company's assets, which results in the Company's assets being insufficient to pay off the Company's debts.

Hence, the principle of limited liability in an individual company will remain in effect as long as the provisions in Article 153J paragraph (2) of the Job Creation Law are not violated by parties with an interest in the individual company.

*One-tier system* is a new thing in the business world in Indonesia, the legality of an individual company that is established even if only by 1 (one) person and a statement of establishment in Indonesian will be recognized as a legal entity. The status as a legal entity obtained by an individual company after the statement of establishment made is registered electronically with the Minister and obtains a registration certificate electronically.<sup>37</sup> The legality of an individual company as a legal entity is also stated in the definition of a limited liability company in the Company Law which has been amended based on the Job Creation Law and PP 8 of 2021. In the provisions of the legislation, it is stated that a limited liability company is an individual legal entity that meets the criteria for micro and small businesses as regulated in the laws and regulations regarding business and micro.

An individual company is said to be a legal entity because that is what the legislation requires, namely by the Job Creation Law which amends the Company Law and Government Regulation No. 8 of 2021. In addition, a company as a legal entity can be recognized or measured through the characteristics of a legal entity as taught by the doctrine of corporate bodies legal entity, where the elements of a legal entity according to the doctrine exist in an individual company are such as:<sup>38</sup> :

1. There is a separate wealth/asset

In individual companies, as regulated in Article 3 paragraph (1) PP 8 of 2021, the company must have the authorized capital of the company. It is further regulated in Article 4 paragraph

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<sup>36</sup>Suharso and Ana Retnoningsih, Lux Edition of the Big Indonesian Dictionary, (Widya Karya 2005), Semarang. 287

<sup>37</sup> Article 6 paragraph (3) Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, State Gazette of the Republic of Indonesia Year 2021 Number 18.

<sup>38</sup>Nindyo Pramono, Law PT....., Op. Cit., p. 33.

(1) that the authorized capital of the company as referred to in Article 3 must be issued and fully paid up at least 25% (twenty five percent) as evidenced by a valid proof of deposit. Authorized capital, issued capital and fully paid up capital are a separate sources of wealth or assets.<sup>39</sup> These separate assets are formed with the aim that if in the future legal responsibilities arise that must be fulfilled by the company as a legal entity, then the resulting liability can be solely charged to the assets collected in the company.<sup>40</sup>

2. There is a specific purpose

In UUPT and PP 8 of 2021, it is regulated that the statement of establishment contains intent and purpose. This shows that establishing a company must have a specific purpose.

3. Have their own interests

Within the company, this interest is reflected on its rights to be able to sue and defend its interests against third parties in its legal relationship.<sup>41</sup>

4. There is an organized organization.

Legal entities can only act through their intermediary organs, until where and how they must act or carry out legal actions and etc, has their own rules. <sup>42</sup>The rules on individual companies are contained in the statement of establishment. Article 153D paragraph (1) of the Company Law stipulates that the company's directors for micro and small businesses as referred to in Article 153A, must carry out company management for micro and small businesses for the benefit of the company in accordance with the aims and objectives of the company. From the explanation above, legal entities have an organized organization.

In the one-tier system, the main goal to be achieved remains the same, namely the principle of limited liability, to make the company an attractive investment vehicle, because through the principle of a separate legal entity, it provides a wall and veil of protection to innocent shareholders, that has to be off and free from a third party claims arising from contracts or transactions carried out by the company.<sup>43</sup> In addition, limited liability also aims to cultivate passive investors, namely for the shareholders to put a certain amount of money in the business managed by the company without taking risks that can reach their personal assets.<sup>44</sup>

As explained above, the one-tier system still adheres to the principle of limited liability, where the concept of limited liability is one of the fundamental instruments in company law. This concept cannot be separated from the principle of piercing the corporate veil or which can be interpreted as "removing the veil of the company", namely a situation where the court can decide that the principle of separation of personality that is attached to the management of the company or the company itself as a legal entity, can be ignored.<sup>45</sup>

In the context of the shareholder's bad faith as referred to in Article 153J paragraph (2) of the Job Creation Law, the shareholder is protected behind the principle of limited liability of the company or the principle of limited liability itself, which causes the wealth of the shareholder to be unaudited in the intentions of the shareholder. This is included in the principle of piercing the corporate veil.<sup>46</sup> While the unlawful act referred to is described in Article 1365 of the Civil Code, which explains that "Every act that violates the law and causes harm to others, obliges the person who caused the

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<sup>39</sup> *Ibid.* p. 34.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.* p. 36.

<sup>42</sup> *Ibid.*

<sup>43</sup> M. Yahya Harahap, *Op. Cit.*, 2009, p. 75.

<sup>44</sup> *Ibid.*

<sup>45</sup> Nindyo Pramono, 'Comparison of Limited Liability Companies in Several Countries' (2012) Scientific Writing Activities Center for Research and Development of the National Legal System National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia. *Op.Cit.*, p. 18.

<sup>46</sup> Gunawan Widjaya, *Legal Risk As Director, Commissioner and Owner of PT* (Forum Sahabat 2008) Jakarta. 38-40

loss because of his fault to replace the loss. Hence, when a company commits fraud or acts that are contrary to the law, it is necessary to pay attention to who has issued the loss because either it was a limited liability company or individual company, both are still an artificial person whose will is carried out by the shareholders, so when an unlawful act occurs, it is necessary to investigate and analyze the act.<sup>47</sup> Regarding the shareholders using the Company's assets which resulted in the Company being insufficient to pay off the Company's debts, it is important for the Company to implement the principal of good governance, whereas every business decision taken needs to consider risk management.

Furthermore, the Elucidation of Article 3 paragraph (2) of the Company Law states that in certain cases it is possible to eliminate the principal of limited liability, if it is proven that the things mentioned in this paragraph are proven. The liability of shareholders in the amount of the deposit for all the shares they own may be eliminated if it is proven that, among others, there has been a mixing of the shareholder's personal assets and the company's assets so that the company is established solely as a tool used by shareholders to fulfill their personal goals as referred to in number 2 and 4.

### **3. Sole proprietorships and unlimited liability in other countries**

One of the benefits mentioned for business owners to adopt sole proprietorship in their companies are complete control of their business operation, all daily activities, and in some cases in the United States, sole proprietorships are even exempted from state and federal taxes because it is counted as personal income.<sup>48</sup>

Sole proprietorship automatically reduces the potential to have conflict with other shareholders and other company organs that appear in a limited liability company with multiple shareholders and board executives. Nevertheless, its unlimited liability becomes a disadvantage for people because personal assets of the owner is then included in the business risk, and if the business fails all assets that the owner may have can be taken away. The law in the United States does not consider the owner to be legally separated to the business, and so the owner can be held personally liable for the obligation and debt that the business has incurred.<sup>49</sup>

In Thailand, sole proprietorships also come with unlimited liability. Under Thailand Ministry of Foreign Affairs Business Handbook, sole proprietorship is defined as “a business with single owner with unlimited liability”.<sup>50</sup> In the context of e-commerce, sole proprietorships in Thailand are growing too fast and these individual businesses have conducted sales through the internet with very low cost and without the need for any registration or certification.<sup>51</sup>

The situation of unlimited liability in sole proprietorships in these two countries are very different if compared to Indonesia. Sole proprietorships are treated more similar to individual business owners in a more relaxed manner. Indonesian law itself has not regulated these kind of individual business owners before this, but it is known that businesses in the form of individual business (*usaha perseorangan*) exist. The individual corporation that is established under Indonesian law

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<sup>47</sup> Ibid.

<sup>48</sup> Stephen J. Skripak, *Fundamentals of Business* (VT Publishing 2018), Virginia. 109.

<sup>49</sup> U.S. Small Business Administration, *Sole Proprietorship*, < <https://www.sba.gov/content/sole-proprietorship>>, accessed 2 October 2021.

<sup>50</sup> Pattarawadee Permwanichagun *et.al.*, *The Situations of Sole Proprietorship, E-Commerce Entrepreneurs and Trends in Their E-Commerce: A Case Study in Thailand*, *Asian Social Science*, Vol. 10 No. 21, 2014. 81.

<sup>51</sup> Ibid.

now is more formal, and the liability regime because it adopts limited liability, is safer for business owners.

## CONCLUSION

*One-tier system* in an individual company is a new thing in the legal system in Indonesia. This sole proprietorship is more often used in countries that adhere to the Common Law legal system. Individual companies that are present as something new in the legal system in Indonesia have similarities and differences in characteristics with limited liability companies that have been known so far. Characteristics that can be seen from the one-tier system in this individual company are about the establishment, capital, organs, shareholders and responsibilities. At the establishment of an individual company, it is established by 1 (one) person with a statement of establishment in the Indonesian language. Individual companies are required to have the authorized capital of the company, the amount of which is determined based on the decision of the founder of the company. Furthermore, the authorized capital of the company must be issued and fully paid up at least 25% (twenty five percent) as evidenced by a valid proof of deposit and must be submitted electronically to the Minister within a maximum of 60 (sixty) days from the date of filling in the statement of establishment for individual companies. The Organs in an individual company is only consist of shareholders who are also acting as the directors.

The principle of shareholder responsibility (limited liability) means that the shareholders of the company are not personally responsible for the engagements made on behalf of the company and are not responsible for the company's losses that exceed the shares their owned. There is also an obligation to change the status of individual companies to company according to several reasons that are stated in the Company Law or in the PP 8 of 2021. The dismissal of individual company can happen in accordance to the reasons stipulated in the PP 8 of 2021, whereas the dismissal need to be stated in the statement of dismissal and has to be notified electronically to the minister.

In the one-tier system, the main goal to be achieved remains the same, namely the principle of limited liability, to make the company an attractive investment vehicle, because through the principle of a separate legal entity, it provides a wall and veil of protection to innocent shareholders, where they are off and free from third party claims arising from contracts or transactions carried out by the company. As the limited liability principle is written in Article 153J (1) of the Job Creation Law, however the limited liability principle can not always be applied to an individual companies that adhere to this one-tier system, this is as long as the provisions in Article 153J paragraph (2) of the Job Creation Law are not violated by the parties. with an interest in the individual company.

The form of limited liability that is implemented in Indonesia is different if compared to unlimited liability system in sole proprietorships in the United States and Thailand. Sole proprietorships are treated as an individual business that is exempted from several regulatory requirements, and are more dynamic in nature, whereas individual company in Indonesia has limited liability and still needs to fulfill the requirements of limited liability company in general.

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