

Opportunities and Challenges of One Person Company for Micro and Small Enterprises in Indonesia

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ABSTRACT

The presence of Law Number 11 of 2020 concerning Job Creation invites many pros and cons from various parties. On the other hand, the Job Creation Law also provides new hope for business actors, especially those on a small scale and who are just starting to be able to establish a legal entity for a Limited Liability Company. The presence of the Company for Micro and Small Enterprises (MSE) provides a number of concessions for MSE entrepreneurs, as well as aims to improve the national economy. As a new business model in Indonesia, the Company for MSEs requires adequate regulations to realize the ease of doing business effectively and efficiently. This article discusses the opportunities that can be maximized from this form of business as well as the challenges that both the government and business actors must anticipate. This study on the Company for MSEs which adopts the concept of One Person Company or Single Limited Liability Company in Indonesia also refers to the practice and regulatory experience in Germany and India. From the results of the study, it is necessary to immediately implement an implementing regulation of the Job Creation Law, especially the Limited Liability Company sector which is comprehensive and in accordance with the needs so that the Company's practice for MSEs can be realized in Indonesia.

ABSTRAK

Kehadiran Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja mengundang banyak pro dan kontra dari berbagai pihak. Di sisi lain, Undang-Undang Cipta Kerja juga memberikan harapan baru bagi pelaku usaha khususnya yang berskala kecil dan baru merintis untuk dapat mendirikan badan hukum Perseroan Terbatas Perseorangan. Kehadiran Perseroan untuk Usaha Mikro dan Kecil (UMK) ini memberikan sejumlah kelonggaran bagi pengusaha UMK, sekaligus bertujuan untuk meningkatkan perekonomian nasional. Sebagai suatu model usaha yang baru di Indonesia, Perseroan untuk UMK ini memerlukan regulasi yang memadai untuk mewujudkan kemudahan berusaha secara efektif dan efisien. Artikel ini membahas mengenai peluang yang dapat dimaksimalkan dari bentuk usaha ini serta tantangan yang harus diantisipasi baik oleh pemerintah maupun pelaku usaha. Kajian mengenai Perseroan untuk UMK yang menganut konsep PT Perseorangan di Indonesia ini juga mengacu pada pengalaman praktik dan regulasi dari negara lain yaitu Jerman dan India. Dari hasil kajian dibutuhkan segera peraturan pelaksana dari Undang-Undang Cipta Kerja, khususnya sektor Perseroan Terbatas yang komprehensif serta sesuai dengan kebutuhan agar praktik Perseroan untuk UMK ini dapat segera terwujud di Indonesia.

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INTRODUCTION

Law Number 11 of 2020 on Job Creation or as known as the Omnibus Law has been officially ratified on November 2, 2020.¹ One of the objectives of the formation of this law is to improve the investment climate in Indonesia.² Nevertheless, the presence of this law reaps many pros and cons in the society, even since it has not been officially ratified. Many parties consider that the Job Creation Law favors large-scale business actors and investors. Various issues of employment, environmental as well as natural resources have become a separate focus of this law, which at the same time becomes the reason for rejection from various parties. On the other hand, the ease of investing becomes a reason for some other party to support it, with the hope that the existence of the Job Creation Law can improve the Indonesian economy.

The controversy of the Job Creation Law not only raises concerns for workers, environmentalists and natural resources activists, but also attracts the attention of business actors. It can be observed that the changes presented in the Job Creation Law are not only limited to providing ease for macro business actors but also providing new hope for micro and small enterprises (MSE) in Indonesia. MSEs need special attention because from the employment perspective, in 2014, MSEs were able to absorb 96.7% (ninety-six point seven percent) of the total national workforce, of which 87% (eighty-seven percent) of the workforce was absorbed by micro enterprises.³ The latest data from Badan Pusat Statistik (BPS) shows that MSMEs absorbed 117 million workers or 97% (ninety-seven percent) of the world workforce in 2018.⁴ One of the efforts to support MSEs is by creating a regulation regarding the formation of companies for MSEs.

The provisions on company establishment for MSEs regulated in the Job Creation Law are different from the provisions on the formation of a limited liability company regulated under Law Number 40 of 2007 on Limited Liability Companies. One of the crucial matters on the conditions for the establishment of a company for MSEs include the minimum number of founders. In contrast with the provisions under Company Law which requires the establishment of a company by a minimum of 2 (two) founders, MSEs are allowed to establish a company by only a founder. Although this type of One Person Company (OPC, *Perseorangan Terbatas Perseorangan*) is common in many countries around the world, it is considered new in Indonesia.

¹ Undang-Undang Cipta Kerja saat ini sedang dalam proses revisi pasca Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020.

² Kiki Safitri, 'Kehadiran UU Cipta Kerja Disebut Bikin Iklim Investasi Domestik Membaik, Ini Buktinya' (Jakarta, 16 November 2020).

³ Departemen Pengembangan UMKM Bank Indonesia, *Pemetaan Dan Strategi Peningkatan Daya Saing UMKM Dalam Menghadapi Masyarakat Ekonomi Asean (MEA 2015)*, vol 27 (2016) 9.

⁴ Antonius Purwanto, 'Potret Dan Tantangan UMKM Di Indonesia' <<https://kompaspedia.kompas.id/baca/paparan-topik/potret-dan-tantangan-umkm-di-indonesia>> accessed 15 January 2021.

MSEs which considered as the backbone Indonesian economy,⁵ is also expected to be a hope for the recovery of national economy after the COVID-19 pandemic.⁶ In line with this, the opportunity to form a company for MSEs under the Job Creation Law can be seen as one of the supporting factors for business actors, especially MSEs, to be able to develop their business under the form of an Limited Liability Company (LLC, *Perseroan Terbatas*).

The various advantages and positive impacts gained from the implementation of OPC in Indonesia through the Job Creation Law can be achieved if it is supported by implementing regulations that regulate the details of those matters. As a new concept in Indonesia, it is necessary to conduct a study that refers to the provisions and practices of OPC that have been done in various countries in the world since tens or even hundreds of years ago. This study is needed so that the existence of an OPC which has been regulated in the Job Creation Law can be immediately realized in Indonesia. Thus, the expected benefits can also be immediately felt by business actors in particular as well as the national economy in general. The practice of OPC in Indonesia will also need to adapt to the needs of the community, especially MSEs business actors as the main target.

Based on this background, the author is interested in conducting a study on a form of company for MSEs by referring to the regulations and practices of OPC in several countries in the world, which can be referenced for the realisation of OPC that is suitable to the needs of Indonesian people. Several important matters must also be immediately regulated and anticipated to optimize implementation of company form for MSEs in Indonesia. As such, this article was created to conduct further studies about company form for MSEs, various opportunities that can be maximized, as well as challenges that need to be anticipated with various implementing provisions that refer to the practice of OPC in several countries. The countries which will be further analysed include Germany as one of the first countries implementing the concept of OPC, and India which just recently adopted the concept of OPC, but has succeeded in increasing the economy of MSEs.⁷

METHODS

The research method used in this article is literature methods with juridical-normative and comparative approach, that examines legal concepts based on the opinions of legal experts in order to answer the legal issues faced.⁸ While the analysis method used is descriptive-qualitative analysis. This article used a literature method because there was no previous OPC practice in Indonesia. Nevertheless, an analysis on the form of OPC can be done through an explorations of concepts, regulations and implementation through primary legal sources in the form of laws and regulations, secondary legal sources in the form of books, journals, news, and official reports, as well as tertiary legal sources in the form of dictionaries.

⁵ Okta, 'Kementerian Komunikasi Dan Informatika' (17 February 2016) <https://www.kominfo.go.id/content/detail/6800/jokowi-umkm-tulang-punggung-ekonomi-ri-asean/0/sorotan_media> accessed 11 January 2021.

⁶ Eko Rahmawanto, 'Pasca Covid-19, UMKM Tulang Punggung Pemulihan Ekonomi' (Jakarta, 11 May 2020).

⁷ Nikunj Keyal, 'One Person Company' <<http://www.legalservicesindia.com/article/2188/One-Person-Company.html>> accessed 13 January 2021.

⁸ Peter Mahmud Marzuki Author and Peter Mahmud, *Penelitian Hukum* (Kencana Prenada Media Grup 2009) 35.

RESULTS AND DISCUSSION

1. Limited Liability Company and One Person Company in Indonesia

1.1 Limited Liability Company in Indonesia

Limited Liability Company (LLC, *Perseroan Terbatas*) is a form of business entity that is quite popular in Indonesia. Compared to other forms of business entities, LLC is one of the most sought after business entities by business actors in Indonesia. This is due to the characteristics of the LLC, particularly that relates to the separation of company assets from personal assets as well as limited liability.

Based on the procedures for establishing LLC as regulated in Law Number 40 of 2007 on Limited Liability Companies (Company Law), the establishment of LLC must be carried out by at least 2 (two) persons as the minimum number of shareholders. This is because formation of LLC is based on an agreement for capital partnership, which basically cannot be carried out by only a person. This provision makes it difficult for micro and small enterprises (MSEs) in establishing LLC because the majority of them are independent entrepreneurs who run their own business and do not partner with other parties.

Article 7 paragraph 1 of the Company Law stated that LLC is founded by 2 (two) or more persons with a notarial deed. Accordingly, it can be seen that the overall provisions on LLC in this law adopted the concept of agreement regulated in book III of the Civil Code. So does the provisions on shareholders which also refers to that concept, and thus the minimum requirement of 2 (two) founders is seen as an absolute requirement. However, judging from the previous paragraphs in the Company Law, there is a possibility that the shareholders become a sole shareholder after a company obtain its status as a legal entity, which could be due to one of the shareholders selling his/her shares to the other shareholder.⁹

As a result of the above scenario, that sole shareholder becomes personally responsible for all agreements and losses suffered by the company. If there is no other shareholder after at most (six) months since that company with a sole shareholder obtained its legal status, then the shareholder is obliged to transfer some of its shares to another person or issue new shares for another person. Furthermore, if the number of shareholders still has not changed after that period ends, then the court has the right to dissolve the company at the request of the interested party.

The rigid requirements regarding the number of founders or shareholders in LLC then leads to a legal smuggling (fraud legis) against the provisions of Company Law.¹⁰ The number of shareholders as required by the Company Law is often only fulfilled as a mere formality at the time of registration or establishment of the LLC, whereas the day-to-day business of the company is carried out only by one party.

⁹ Verti Tri Wahyuni, 'Kepemilikan Tunggal Badan Hukum Perseroan Terbatas (PT)' (2017) 8 Jurnal Hukum Novelty 201, 204.

¹⁰ Nindyo Pramono, *Perbandingan Perseroan Terbatas Di Beberapa Negara* (Badan Pembinaan Hukum Nasional 2012) 144.

1.2 One Person Company in Indonesia

Besides LLC, another form of business entity that is also popular in Indonesia is sole proprietorship. Sole proprietorship is defined as a company that runned by a person only.¹¹ With regards to sole proprietorship, from its registration to its dissolution, it has not been regulated in any in-force laws and regulations in Indonesia. The flexibility of this form of business then becomes one of the choices of many business actors in Indonesia, be it a trade company or trade business which is basically a company runned by a person. In a sole proprietorship, the property of the owner becomes a guarantee for all debts of the company, thus as a consequence there is no limitation of personal liability as the owner's assets and company's assets are not separated.

Considering those flaws, the business entity of LLC with its advantages became an attraction for entrepreneurs, with the strong interest in sole proprietorship, it then resulted in the creation of another business entity, that is One Person Company (OPC, *Perseroan Terbatas Perseorangan*). OPC basically adheres to the LLC concept but is specifically intended for sole business actors who do not partner with other parties, such as sole proprietorships. Like LLC, OPC is a legal entity with limited liability, but it is led by only one director.¹² This form of business entity is a new emerging concept in Indonesia that targets micro and small enterprises (MSEs).

Although it's a very new concept in Indonesia, OPC is a business entity that is popular in other countries. The concept of OPC was first created in 1982 on Germany.¹³ The first concept of OPC in Germany since the introduction of a company established by only a person is called *Gesellschaft mit Beschränkter Haftung (GmbH)* which regulated by a specific regulation on *GmbH* that is called *Gesetz betreffend die Gesellschaft mit Beschränkter Haftung (GmbHG)* or *Limited Liability Companies Act*. Furthermore, OPC in the United Kingdom is called 'Single Member Company' and is regulated by the Companies Act, 2006. While in India, OPC is regulated in the India Companies Act, 2013.¹⁴

Other countries that have officially implemented the concept of OPC are Japan,¹⁵ South Korea,¹⁶ Malaysia,¹⁷ and India.¹⁸ Netherlands also has introduced *Besloten Vennootschap met beperkte aansprakelijkheid* or BV since 1971. BV has different characteristics with *Naamloze Vennootschap (NV)*, a business entity that previously known in Netherlands.¹⁹

The official regulation regarding OPC in Indonesia only existed in 2020 through the Job Creation Law. As a support for MSEs, the Government through the Job Creation Law

¹¹ H Zainal Aikin and L Wira Pria Suhartana, *Pengantar Hukum Perusahaan* (Kencana 2016) 6.

¹² Muhammad Faiz Aziz, 'Mikro Kecil (UMK) Melalui Rancangan Undang-Undang Tentang Cipta Kerja' (2020) 9 Rechts Vinding 91, 95.

¹³ Anner Mangatur Sianipar, 'Perkembangan Hukum Perseroan Terbatas (PT) Yang Berbentuk Pt Perseorangan' (Airlangga 2018) 273.

¹⁴ Sianipar (n 13).

¹⁵ Japan Companies Act 2005.

¹⁶ The Addendum of Commercial Act 1962.

¹⁷ Government of Malaysia, 'Malaysia Companies Act 2016' [2018] International Law Book Services 212.

¹⁸ The India Companies Act, 2013 288.

¹⁹ Sianipar (n 13) 281.

amended several provisions of Company Law. In relation to LLC, the Job Creation Law still retains several articles from the Company Law, one of which is Article 7 paragraph 1 which requires the formation of a company by 2 or more people with a notarial deed written in Indonesian language²⁰ However, the Job Creation Law creates a new article which excludes Article 7 paragraph 1 for several institutions, including MSEs. Article 153A of the Job Creation Law then states that LLC that meets the criteria of MSE can be established by 1 (one) person. Furthermore, Article 153A paragraph 2 of the Job Creation Law states that the establishment of OPC for MSEs is based on a statement of establishment made in Indonesian language.²¹ This provision that does not require an agreement, rather merely a statement of establishment, is the reason why this form of business entity can be established by 1 (one) person only. It should also be noted that the establishment privilege only applies to MSEs, while for medium and large entrepreneurs who do not meet the criteria as MSEs will continue to follow the LLC establishment mechanism as regulated in the Company Law.

With regards to the minimum authorized capital, both OPC and LLC are given the freedom to determine the amount at the time of the company's establishment. This has been regulated in Government Regulation Number 29 of 2016 on Changes in the Authorized Capital of Limited Liability Company in Indonesia. Furthermore, other matters concerning OPC for MSEs that have not been regulated in the Job Creation Law will be regulated further in a Government Regulation. There are 2 Government Regulation which implement the Job Creation Law, that are Government Regulation Number 7 Year 2021 on Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises, as well as Government Regulation 8 Year 2021 on Authorized Capital of the Company and Registration of Establishments, Changes, and Companies that Meet the Criteria for Micro and Small Businesses. Specifically on the relief of OPC fees for MSEs, Article 153I paragraph (2) of the Job Creation Law states that it will be regulated in accordance with the provisions of the laws and regulations in the field of non-tax state revenues.

Even though the existence of OPC is only officially regulated after the enactment of the Job Creation Law, however, Article 7 paragraph 5 of the Company Law has implicitly given the possibility of an individual company in Indonesia. This serves as a recognition for the existence of an OPC in Indonesian law. Article 7 paragraph 5 of the Company Law states that if until 6 (six) months, a LLC that should be owned by at least two persons still owned by a sole shareholder, that sole shareholder is given the chance to transfer its shares to other parties. If there is a risk against the LCC happening within that period, then the sole shareholder will be responsible for it, as is the case with sole proprietorship.

2. Forms and Characteristics of One Person Company in Other Countries

2.1 Germany

Germany is the first country in the world to formally introduce the concept of a One Person Company (OPC) by introducing a new form of LLC, namely *Gesellschaft mit Beschränkter Haftung* (GmbH) which can be established by 1 (one) person or more. GmbH was introduced

²⁰ Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas 2007.

²¹ Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja 2020.

in 1892 or before the case of *Salomon vs Salomon* (1897).²² GmbH is the first form of OPC which is formally recognized in the world. GmbH is regulated in a specific law concerning GmbH, namely *Gesetz betreffend die Gessellschaften mit beschränkter Haftung* (GmbHG) which translates into the Limited Liability Companies Act.²³

Basically, the number of founders or shareholders of GmbH is not required to be 1 (one) person. GmbH can be established by 1 (one) or more than 1 (one) person. Regarding the number of founders and shareholders of this GmbH, it is determined by the prospective founders, whether they want to establish and run their own company or partner with other parties. However, there are provisions that limit the establishment of this GmbH, particularly regarding the status of the GmbH. If the GmbH established by 1 (one) person with single share ownership is a legal entity, the sole shareholder in the company is not allowed to become the sole shareholder in another company which is also in the form of GmbH.²⁴

Besides GmbH, another form of business entity that is also popular in Germany is *Aktiengesellschaft* (AG). There are several similarities and differences between GmbH and AG. The characteristics and existence of this GmbH are in principle the same as AG. The most prominent similarity is that GmbH and AG are both LLC and are independent legal entities.²⁵ As a legal entity, assets and liabilities of a GmbH are separated from its shareholders. Shareholders in GmbH have separate and limited civil and criminal liability from the GmbH itself as stipulated in Part 1, Section 1 GmbHG, 2016,²⁶ which states that GmbH is: “a limited liability company may be formed by one person or several persons pursuant to the provisions of this Act for any purpose permitted by law.” The main difference between GmbH and AG is that GmbH is a private company that cannot sell its shares on the Stock Exchange, while this AG is known as the German Stock Corporation or publicly-listed company. AG as a publicly-listed company is the only form of LLC that can sell its shares on the Stock Exchange.

The requirements for establishing a GmbH are much more flexible than AG. To establish an AG the minimum authorized capital needed is EUR 50.000, while the minimum authorized capital needed to establish a GmbH is only EUR 25.000.²⁷ German law does not allow 1 (one) share to be owned by more than 1 (one) person. This provision is certainly different from Indonesian law that allows it. Article 53 paragraph 5 of the Indonesian Company Law stipulates that if 1 (one) share is owned by more than 1 (one) person, then a person shall be appointed as joint representative for the bearer of rights. Additionally, based on Part 2, Section 20 GmbHG/LLC Act, 2016, each purchase of GmbH shares is determined by the value of the share capital payment or the purchase of shares, i.e. if the shareholder does not pay off the value of his shares by the deadline for payment, that shareholder will have to pay a default interest according to applicable laws.

²² Timothy W Guinnane, ‘Adapting Law to Fit the Facts : The GmbH, the SARL, and the Organization of Small Firms in Germany and France, 1892-1930’ 1892, 1.

²³ Sianipar (n 13) 283.

²⁴ Sianipar (n 13).

²⁵ Sianipar (n 13).

²⁶ Federal Ministry of Justice, ‘Limited Liability Companies Act (Gesetz Betreffend Die Gesellschaften Mit Beschränkter Haftung , GmbHG)’ 1.

²⁷ Sianipar (n 13) 289.

Prior to regulatory changes in Germany, there must be at least 2 (two) or more founders to establish AG, but currently, both AG and GmbH can be founded by only 1 (one) person. In relation to the management of AG and GmbH, it must be carried out by at least 1 (one) Director Member who is an individual, but it is not required to have a board of commissioners. Nonetheless, if the GmbH has more than 500 (five hundred) employees, then it is required to have a Board of Commissioners that are separated from the Board of Directors.²⁸ Apart from being a popular form of business entity in Germany, GmbH also influences the forms of private companies in other countries, especially for small and medium enterprises.

2.2 India

While Germany was one of the pioneers of OPC, India just recently implemented the concept of OPC through the enactment of The Companies Act, 2013 (No.18 of 2013), No. DL-(N) 04/0007/2003-13 of August 30, 2013.²⁹ Section 2(62) of the Indian Company Law defined One Person Company (OPC) as “*a company which has only one person as a member.*”³⁰ This definition is in line with the definitions in other countries.

The concept of OPC in India is adopted from a system that has long been implemented in the United Kingdom, which specifically designates a form of business entity for small entrepreneurs or small companies. This is what specifically distinguishes OPC in India from GmbH in Germany, as German law does not explicitly state that GmbH is intended for small entrepreneurs. As the name implies, OPC is a legal entity that can be established by only 1 (one) person. This is regulated in Section 3(1)c of the India Companies Act which states that “*one person, where the company to be formed is to be One Person Company that is to say, a private company.*” Prior to the regulations which governs OPC, the legal system in India have recognized 2 (two) types of companies, namely Private Limited Companies (Pvt.Ltd) which can be established by at least 2 (two) persons, and Public Limited Company (Plc) which must be established by minimum 7 (seven) persons.

Apart from the provision on minimum 1 (one) founder for OPC, there is no provision regarding the minimum authorized capital that must be owned at the time of establishment of the OPC. This is similar to the regulatory regime in Indonesia. Article 1 paragraph 3 of Government Regulation Number 29 of 2016 on Changes in the Authorized Capital of Limited Liability Company in Indonesia, which replaces Government Regulation Number 7 of 2016, states that the amount of authorized capital for LLC is regulated by the shareholders themselves and it should be included in the deed of establishment. Meanwhile, the authorized capital requirements to establish a Private Company (Pvt.Ltd) and Public Limited Company (Plc) in India are the same as the provisions in Indonesia as both stated the minimum authorized capital that must be owned. To establish a Private Company (Pvt.Ltd) in India, you must have a paid-up share capital of at least 1 Lakh Rupees,³¹ while to establish a Public

²⁸ Sianipar (n 13).

²⁹ Harshita, ‘Procedure For OPC As Per Companies Act 2013’ <<http://www.legalserviceindia.com/legal/article-2244-procedure-for-opc-as-per-companies-act-2013.html>> accessed 12 January 2021.

³⁰ The India Companies Act, 2013.

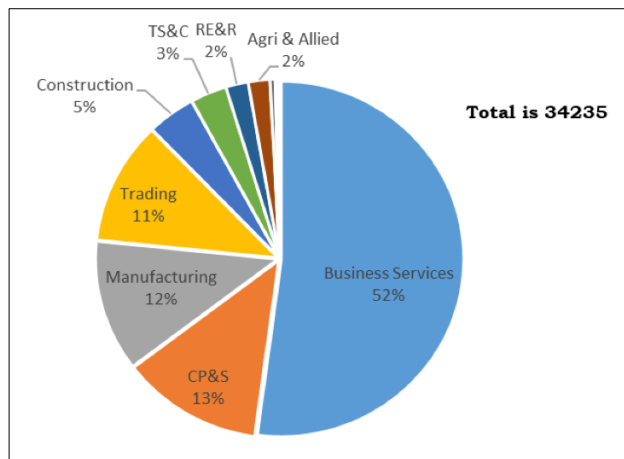
³¹ The India Companies Act, 2013.

Limited Company (Plc) you must have a paid-up share capital of at least 5 (five) Lakh Rupees.³²

Another characteristic of OPC in India compared to GmbH is that a person in India can manage at most 5 (five) OPCs, while German law only allows 1 (one) person to manage 1 (one) GmbH company.³³ The various advantages and conveniences of OPC then become the main attraction for entrepreneurs, especially for those who are just starting out and small-scale business, as it allows them to do their business with a more organized structure and get the privilege of personal assets separation from company’s assets. OPC also provides many opportunities for micro and small businesses to be able to test business models, products and services before attracting investors.

This business entity concept also provides flexibility for micro and small entrepreneurs as well as novice entrepreneurs to be able to manage their business while enjoying the company's profits. This kind of business entity also provides convenience in accessing banking facilities. Therefore it is not surprising that within 2 (two) years, OPC in India has progressed and attracted business players' interest rapidly. The number of OPCs established in India reached a total of 7.127,³⁴ although there were some who experienced several obstacles such as strikes, layoffs, and involved in legal cases, but the percentage of it was very minor compared to the number of OPCs actively operating in India. According to data from the Monthly Information Bulletin on Corporate Sector,³⁵ as of December 31, 2020, a total of 34,335 (thirty four thousand three hundred and thirty five) OPCs have been registered in India (**Chart 1**).

Chart 1: Sector-wise OPCs in India as on 31st December, 2020



(Source: *Monthly Information Bulletin on Corporate Sector*)

³² The India Companies Act, 2013.

³³ Prem Rajani, ‘The One Man Show: Understanding the Concept of One Person Company’ <<https://economictimes.indiatimes.com/small-biz/legal/the-one-man-show-understanding-the-concept-of-one-person-company/articleshow/72195134.cms>> accessed 13 January 2021.

³⁴ Keyal (n 7).

³⁵ ‘Monthly Information Bulletin on Corporate Sector December 2020’ <<https://taxguru.in/company-law/monthly-information-bulletin-corporate-sector-december-2020.html>> accessed 13 January 2021.

3. Opportunities and Challenges of Limited Liability Company (LLC) for Micro and Small Enterprises (MSEs) in Indonesia

The recognition of the existence of OPC is a form of development in modern corporate law today. OPC as a form of independent legal entity, is the same as LLC in general with its main characteristics, namely the separation of company's assets from personal assets and limited liability. With a concept similar to LLC but can be established by 1 (one) person and single share ownership, OPC provides a great opportunity for micro and small business actors to develop their business further.

MSME is defined as businesses that meet the criteria stated in Article 6 of Law Number 20 of 2008 on Micro, Small and Medium Enterprises (MSMEs).³⁶ The MSME Law states that micro-enterprises are businesses that have a maximum net worth of 50 million Rupiah, excluding land and buildings for business operations, and has a maximum annual sales of 300 million Rupiah. Meanwhile, small-enterprises are businesses that have a net worth of 50 to 500 million Rupiah, excluding land and buildings for business operations. In addition, the annual sales of small-enterprises should be 300 million to 2.5 billion Rupiah. Lastly, medium-enterprises are businesses that have a net worth of 500 million to 10 billion Rupiah, excluding land and buildings for business operations. Furthermore, medium-enterprises should have an annual sales of 2.5 to 50 billion Rupiah.

The existence of OPC shows the Government's effort to legalize MSEs as legal entities, which was done by removing the minimum requirement of authorized capital that must be owned, as stated in Government Regulation Number 29 of 2016 which was later also stipulated in the Job Creation Law. These easeness, in addition to bringing benefits for business actors, also assist the government in encouraging employment opportunities in order to improve the national economy, considering MSEs are a business sector that absorbs lots of labor. However, only less than 0.01% of the total MSEs in Indonesia are legal entities.³⁷ The advantage of a sole proprietorship that can also be felt by MSEs is that single share ownership allows business decisions to be made faster than LLCs in general.

The presence of new regulations that can potentially increase the development of MSEs in Indonesia will not only provide benefits for business actors, but also for the country's economy in general. This is because the large number of MSEs in Indonesia has a significant influence on the national economy. The amount of MSEs continues to increase from year to year. In 2010, the number of MSMEs across the country reached 52.8 million businesses. Five years later it rose to 59.3 million, and in 2018 the total number of MSMEs reached 64.2 million businesses (**Chart 2**).³⁸ With that number, MSMEs contribute 60.3% of Indonesia's

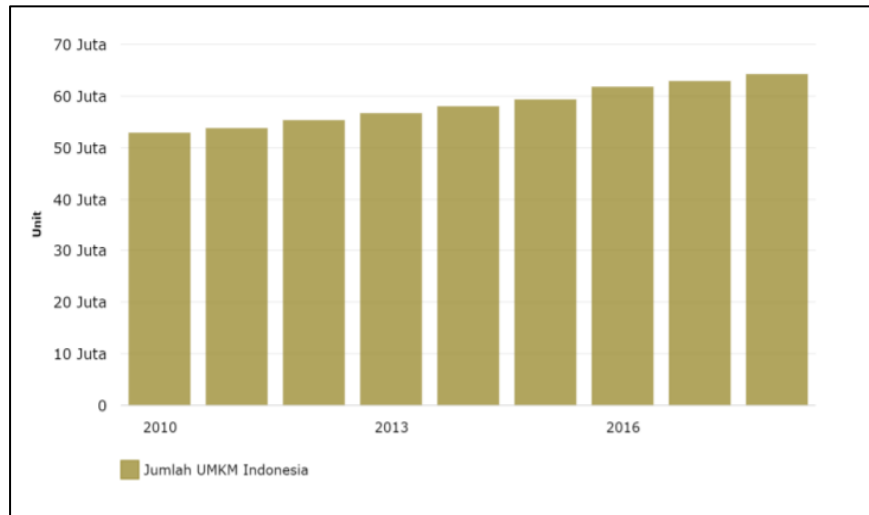
³⁶ Undang-Undang Republik Indonesia Nomor 20 Tahun 2008.

³⁷ GRF & CO, '(OMNIBUS LAW RUU CIPTA KERJA) Kini Pendirian Badan Hukum Dapat Dilakukan Oleh 1 Orang - GRF Law Firm' <<https://grfandcolawfirm.com/omnibus-law-ruu-cipta-kerja-kini-pendirian-badan-hukum-dapat-dilakukan-oleh-1-orang/>> accessed 13 January 2021.

³⁸ 'Pemerintah Beri Stimulus, Berapa Jumlah UMKM Di Indonesia? | Databoks' <<https://databoks.katadata.co.id/datapublish/2020/04/08/pemerintah-beri-stimulus-berapa-jumlah-umkm-di-indonesia#>> accessed 13 January 2021.

total gross domestic product (GDP). In addition, MSMEs absorb 97% of the total workforce and 99% of the total employment.³⁹

Chart 2: The Amount of MSMEs in Indonesia, 2010-2018



(Source: Badan Pusat Statistik, 2020)

Realizing the potential of a strong business base in MSEs, the government has made several efforts and policies to be able to further drive MSMEs. These policies include loan interest subsidies, credit restructuring, also providing working capital guarantees and tax incentives.⁴⁰ The government also places funds in national banks for the purpose of restructuring MSME loans by allocating funds of approximately 78.78 trillion Rupiah. Further, to increase MSME liquidity in business, the government guarantees MSME working capital of up to 10 billion Rupiah through PT Jamkrindo and Askrindo (Persero). The government also provides tax incentives to reduce the burden on MSME employees by giving incentives for Income Tax (PPh 21). For MSMEs business actors, a final income tax incentive of 0.5% will be borne by the government.⁴¹ Thus, the existence of business entity for MSEs is one of the various government efforts to support MSMEs in Indonesia.

Some advantages of OPC which aim to provide further support for the development of MSEs in Indonesia do not necessarily eliminate various assessments as well as pros and cons from the community. Although many parties support the existence of this form of business entity, some other parties consider that the single share ownership in this concept of business entity has a tendency for abuse and crime (fraud) by shareholders. There are also those who worry that third parties could potentially be harmed if the sole shareholder abuses his authority, especially in relation to credit interests, both in banks and other financial service providers. In addition, this kind of single share ownership can also be considered to deviate from the

³⁹ Muchamad Nafi, 'Pengertian UMKM, Kriteria Kekayaan, Dan Pemberdayaan Di Tengah Pandemi' <<https://katadata.co.id/muchamadnafi/berita/5ebe19afb009d/pengertian-umkm-kriteria-kekayaan-dan-pemberdayaan-di-tengah-pandemi>> accessed 15 January 2021.

⁴⁰ Edward Nainggolan, 'UMKM Bangkit, Ekonomi Indonesia Terungkit' <<https://www.djkn.kemenkeu.go.id/artikel/baca/13317/UMKM-Bangkit-Ekonomi-Indonesia-Terungkit.html>> accessed 13 January 2021.

⁴¹ Nainggolan (n 40).

limited nature of LLC, as there is no check and balance function between shareholders and there is no provisions regarding majority share ownership.

As a new form of business entity in Indonesia, OPC for MSEs as regulated in the Job Creation Law, requires considerable effort to optimize the business practice. Apart from the concerns as mentioned above, the implementing regulations for OPC also have not been enacted until now, which then also become a considerable obstacle.

To answer some of the concerns and anticipate unwanted things, there are several ways that can be taken by the government and MSEs business actors to ensure that the implementation of OPC for MSEs will run as expected. For MSEs business actors, one of the important challenges in running a company with a single share ownership is to ensure that the company's finances are completely separated from personal finances. This is because there is a potential risk that may occur in the future where the entrepreneur should be personally liable, one example that occurs in other countries' practice is that the sole shareholder should guarantee the company's loan. Situations like this can be a gap which illustrates that the company is not actually a separate entity from its owners.

In relation to that, MSEs business actors can determine the management structure from the beginning of the company's establishment. OPC are managed by managers and it is stated in the establishment documents, thus the role of managers for companies is automatically separated from the ownership.⁴² In carrying out their duties, managers appointed by the owner of the company are given special and limited tasks, such as employee affairs, taking care of daily administration and business affairs, or other tasks in accordance with orders from the owner or with prior approval. Although managerial tasks can also be carried out by the owner –which seem simpler and will reduce expenses, but, involving professional staff or other parties who can assist in running their day-to-day business can provide more convenience and make the business more structured. In addition, if the sole shareholder is the only person who has the legal authority to run his business and knows everything about the company, this can become a problem in the future if the sole owner dies or is no longer able to run the company.

In line with the previous explanations, OPC for MSEs is not only aimed at supporting business actors, but also encouraging employment opportunities and supporting the national economy. Nevertheless, there are many loopholes that can also be used by business actors to benefit themselves by taking advantage of the weakness of regulations for OPC. This has also been feared by many parties, particularly with regard to potential losses for the country as well as third parties dealing with the company. To anticipate the misuse of the company as a legal entity by the sole shareholder, the implementing regulations of the Job Creation Law, particularly those that regulate OPC for MSEs, can require business actors to periodically conduct financial reporting and company activities as well as audits by public accountants. This is intended to maintain checks and balances in the company. Piercing the corporate veil is a concept that will absolutely exists in every limited liability company, including OPC. This is not a solution but a preventive concept and a reason not to worry about sole ownership of a limited liability company. Financial reporting and audits of public

⁴² Sianipar (n 13).

accountants are still needed to ensure whether the company is still included in the MSE category or not.

In addition, the principle of piercing the corporate veil/lifting the corporate veil can also be implemented in OPC. In Black's Law Dictionary, piercing the corporate veil is defined as "*the judicial act of imposing personal liability on otherwise immune corporate officers, directors and shareholders for the corporation's wrongful act.*" That definition shows that piercing the corporate veil can only occur in the event of a wrongful act. It should be highlighted that it is prohibited not only to do something that should not be done, but also doing an action that is wrong.⁴³

In the Indonesian legal regime, the principle of piercing the corporate veil is explicitly regulated in Article 3 paragraph 2 jo. Article 7 paragraph 6 of the Company Law, where legal responsibility can not only be requested from the company, but can also be requested from its shareholders. However, it only applicable if several conditions occur, among others, (a) if the company's requirements as a legal entity have not been or are not met, (b) shareholders either directly or indirectly with bad faith use the company for personal interests, (c) shareholders are involved in unlawful acts committed by the company, (d) shareholders either directly or indirectly unlawfully use the company's assets and cause the company's assets to be insufficient to pay off the company's debts, or (e) if the company's shareholders are still less than 2 (two) people for a period exceeding 6 (six) months.

The use of the principle of piercing the corporate veil in OPC for MSEs can be an answer to various concerns regarding sole share ownership and abuse of authority. This principle also basically aims to provide legal certainty as well as orderly in running the company, whether it is a regular LLC or OPC. However, this principle can only be used in certain circumstances as specified in the laws and regulations, because if it is not carried out properly, it can actually interfere with the company's unique characteristics, namely the limited liability for lawsuits. Prudence in applying this principle is also intended so that it does not become a boomerang for business actors because it creates fear, both for shareholders and eliminates the attractiveness of investors.

CONCLUSION

One Person Company (OPC) as a new business concept in the development of business law in Indonesia has the opportunity to provide great benefits for micro and small business actors, by increasing the number of jobs and improving the national economy. The success of OPC has been felt by countries in the world such as Germany and India. As a country that has just implemented this form of business entity, there are challenges and efforts that need to be made by the government and entrepreneurs to optimize the implementation of OPC for MSEs in Indonesia. Reflecting the practice and regulations of OPC in Germany and India, what Indonesia currently needs is an implementing regulation that regulates in detail matters relating to OPC for MSEs, both in the form of Government Regulations and other supporting laws and regulations.

⁴³ Titik Tri Sulistyawati, 'Eksistensi Doktrin "Piercing the Corporate Veil" Atas Pelaksanaan Sentralisasi Procurement Anak Perusahaan Oleh Induk Perusahaan' (2018) 1 Notaire 174.

Various leniency in Indonesian regulations regarding OPC for MSEs should be considered as a form of support for MSE growth, of course without ignoring various possibilities that could occur, which could harm MSEs, the state and third parties. In order to minimize unwanted things, the implementing regulations need to regulate the rights and obligations of the sole shareholder, whether it be with periodic financial reporting and the condition of the company, audits by public accountants, as well as forms of protection for third parties involved in partnership with the company. On the other hand, MSE business actors, especially those who have just started their business, can also optimize the concept of the OPC for MSEs by entrusting the management of their company to professionals, for every policy and decision of the company, while in terms of representing the company with other parties is still carried out by the shareholders themselves.

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