







## **Advocating Legal Certainty in Status Transition of Individual Companies Exceeding MSEs Criteria to Limited Liability**

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### **Abstract**

The enactment of Law Number 6 of 2023, concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 on Job Creation, introduced the Individual Company as a legal entity designed to empower Micro and Small Enterprises (MSEs). This provision enables the establishment of a company by a single individual, a departure from the traditional requirement of at least two shareholders. The Job Creation Law, supported by Government Regulation Number 8 of 2021, outlines that an Individual Company is created through a Statement of Establishment, without the need for a Notary Deed, in line with the provisions for MSEs as stipulated in Government Regulation Number 7 of 2021. However, this legal framework creates challenges when an Individual Company exceeds the MSE criteria or gains more than one shareholder. In such cases, the

company must transition into a Limited Liability Company (LLC), a process that requires the drafting of a notary deed and registration through the Ministry of Law and Human Rights' online AHU system. This research focuses on advocating for legal certainty in the status transition of Individual Companies to Limited Liability Companies, which currently involves the dissolution of the original entity before the new LLC can be formed. The lack of a clear, comprehensive legal mechanism for this transition causes significant legal uncertainty. This paper examines the gaps in the existing legal framework and proposes solutions to streamline the conversion process, eliminating the need for dissolution. By advocating for legal certainty in the status transition, this research contributes to the broader discourse on improving the General Legal Administration system, ensuring that the legal status of businesses aligns with their evolving needs, and facilitating smoother business expansion and growth.

## Keywords

*Legal Certainty, Limited Liability, Transition Individual Companies*

## A. Introduction

The Government of the Republic of Indonesia has passed Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into a Law hereinafter referred to as Law No. 6 of 2023. This ratification is intended to provide benefits to business actors because the ratification of the Government Regulation in Lieu of Law (PERPPU) aims to make it easier for business actors to run their businesses<sup>1</sup>.

The ratification of Law No. 6 of 2023 *a quo* into a law, in addition to providing ease of doing business for business actors from various classes ranging from micro, small and medium to micro, small and medium is expected to be able to provide a stimulus for the opening of decent and adequate jobs for the

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<sup>1</sup> Fauzi, Wetria. "Kajian Yuridis Konsep Perseroan Perseorangan Sebagai Badan Hukum Perseroan Terbatas di Indonesia." *UNES Law Review* 5, no. 4 (2023): 1772-1783.

general public which can increase economic figures nationally. The ratification and enactment of Law No. 6 of 2023 *a quo* into this Law has changed at least 82 (eighty-two) other sectoral laws. This determination and ratification have received pros and cons in the wider community, because this is considered only beneficial and the alignment of the rule on foreign investors and business actors who have large capital<sup>2</sup>.

Prior to the ratification and enactment of Law No. 6 of 2023 *a quo*, legislation products from the government that regulate matters related to the business world have been specifically enshrined, both those regulating the Investment Law which regulates Domestic Investment and Foreign Investment, as well as regulations regarding Micro and Small Enterprises (MSEs).

Despite receiving different responses from the wider community, the determination and ratification of Law No. 6 of 2023 *a quo* into law has a positive impact on business actors, especially MSEs. This is explicitly explained in articles 3 and 4 of the attachment to Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, namely:

### Article 3

This Government Regulation in Lieu of Law was formed with the aim to:

- a. Creating and increasing employment opportunities by providing convenience, protection, and empowerment for cooperatives and MSEs as well as national industry and trade as an effort to be able to absorb the widest possible Indonesian workforce while still paying attention to the balance and progress between regions in the national economic unity;

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<sup>2</sup> Hipan, Marno, and Muhammad Abdi Sabri I. Budahu. "Problematisasi PERPPU Cipta Kerja dalam Peraturan Perundang Undangan: Problems of Job Creation PERPPU in Regulations Legislation." *Jurnal Media Hukum* 11, no. 1 (2023): 24-35. See also Tejomurti, Kuku, and Sukarmi Sukarmi. "The Critical Study of the Omnibus Bill on Job Creation Based on John Rawls View on Justice." *Unnes Law Journal* 6, no. 2 (2020): 187-204; Fauzia, Ana, et al. "Implementation of the Omnibus Law Concept and Consolidated Texts: Amalgamation of the Common Law and Civil Law Legal Systems." *Journal of Law and Legal Reform* 4, no. 2 (2023): 235-254.

- b. Ensuring that every citizen gets a job, as well as receives fair and decent remuneration and treatment in employment relations;
- c. Adjusting various aspects of regulation related to partiality, strengthening, and protection for cooperatives and MSEs as well as national industries; and
- d. Adjusting various aspects of regulation 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 direction of the Pancasila ideology.

#### Article 4

In order to achieve the objectives as referred to in article 3, the scope of this Government Regulation in Lieu of Law regulates the strategic policy of Job Creation which includes:

- a. Improving the investment ecosystem and business activities;
- b. Employment;
- c. Facilitation, protection, and empowerment of cooperatives and MSEs;
- d. Ease of doing business;
- e. Research and innovation support;
- f. Land acquisition;
- g. Economic zones;
- h. Central government investment and acceleration of national strategic projects;
- i. Implementation of government administration; and
- j. Imposition of sanctions;

In the *expressive verb* of Article 3 of Law No. 6 of 2023, the government wants a set of rules that are made to provide convenience, flexibility that can provide protection and can empower cooperative and MSE business actors to compete locally and nationally to advance the national economy. The ease of doing business initiated by the government for cooperatives and MSEs, in addition to aiming to advance the national economy,

can also absorb labor which has an impact on decreasing the number of unemployed and reducing poverty rates.<sup>3</sup>

Article 4 of the *a quo* Law explains the scope of regulation as a strategic policy that is interrelated with each other with article 3 as explained above. To be able to realize the mandate of Law No. 6 of 2023, for this reason the government has issued Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small.

The government's policy to support the cooperative business world and MSEs is clearly seen from the mandate of Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and the Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises providing opportunities for MSEs to be able to strengthen business competition that has clear legality in the form of Individual Companies<sup>4</sup>.

An Individual Company is a company formed for economic interests intended for micro and small businesses on the basis of ease of doing business. The ease of doing business in question is the government's strong desire to provide certainty to MSEs in running their business in the form of a legal entity that can provide legal protection and certainty.

Law Number 40 of 2007 concerning Limited Liability Companies is a corporate legal regime that regulates the establishment, capital and structure of company organs, but with the birth of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, it has given birth to a new type of legal entity specifically intended for Micro and Small Enterprises (MSEs). This new type of legal entity that is specifically intended for MSEs is different from the Legal Entity

<sup>3</sup> Putri, Sylvia, and David Tan. "Analisis Yuridis Perseroan Perorangan Ditinjau Dari Undang-Undang Cipta Kerja Dan Undang-Undang Perseroan Terbatas." *Unes Law Review* 4, no. 3 (2022): 317-331.

<sup>4</sup> Aziz, Muhammad Faiz, and Nunuk Febriananingsih. "Mewujudkan Perseroan Terbatas (PT) Perseorangan Bagi Usaha Mikro Kecil (UMK) Melalui Rancangan Undang-Undang Tentang Cipta Kerja." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (2020): 91-108.

of Limited Liability Companies (*Perseroan Terbatas*, PT) which is regulated by Law Number 40 of 2007 concerning Limited Liability Companies. The difference lies in the number of founders and the amount of paid-up capital as initial capital<sup>5</sup>.

As a country that adopts the Dutch legal system, the Netherlands itself since 1992 through *Nieuw Burgerlijk Wetboek* has actually opened the opportunity that a Limited Liability Company can be established by only 1 (one) person. This can be seen in the translation in book 2 concerning *Legal Persons*, Title 4 concerning *Companies Limited by Shares*, Part 1 Article 64 paragraph (2) which stipulates that: "*A company shall be incorporated by one or more persons by notary deed*".

The establishment of a Limited Liability Company (PT) as per Article 7 of Law No. 40 of 2007 is established by a minimum of 2 (two) or more persons made based on a Notary Deed using Indonesian. Meanwhile, based on the attachment to Law No. 6 of 2023 Article 153A states that the establishment of an Individual Company can be established by 1 (one) person as long as the establishment of the Individual Company meets the criteria of an MSE and does not require a notary deed for its establishment<sup>6</sup>.

The ratification of the Constitutional Court's decision Number 91/PUU-XVIII/2020 which states that the Job Creation Law is procedurally flawed, including article 153A concerning individual companies, makes this regulation open enough to be reviewed so that there is no legal uncertainty.

Especially for the establishment of a Limited Liability Company as per article 32 of Law No. 40 of 2007 explains that the authorized capital for the establishment of a limited liability company is at least Rp. 50,000,000 (fifty million rupiah). Meanwhile, to register this Individual Company, it is enough to deposit an initial capital of Rp. 50,000 (fifty thousand rupiah).

Regarding the capital in the establishment of the Company, for Limited Liability Companies, the amount of paid-up capital will be divided into a number of shares that will be owned by the founders, so that the amount of existing capital will be converted

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<sup>5</sup> Harahap, Yahya. M. *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2012).

<sup>6</sup> Darmawan, Agus. "Politik Hukum Omnibus Law dalam Konteks Pembangunan Ekonomi Indonesia." *Indonesian Journal of Law and Policy Studies* 1, no. 1 (2020): 13-24.

into shares depending on the amount of capital deposited by each founder. Meanwhile, in the establishment of an Individual Company, the shareholder is the person who establishes the legal entity itself. The implementation of business activities from the management aspect is different between a limited liability company and an individual company. The limited liability company carries out its activities in accordance with the organs owned by the company itself which includes supervisory functions, implementation of business activities, to policy making and making<sup>7</sup>.

The flexibility of each shareholder of the Company is limited to determining the policy direction of business activities carried out based on agreed joint decisions, so that the implementation of business activities depends on the policy direction taken and agreed upon as a joint decision. Meanwhile, in a sole proprietorship, policies and supervision as well as the implementation of business activities are carried out solely by the company's founder<sup>8</sup>. This means that the founder of the company is a shareholder, director as well as a commissioner.

The government is also confident that the establishment of Individual Companies can introduce innovative solutions and provide a legal framework for Micro and Small Enterprises (MSEs) and cooperatives, offering them enhanced convenience, protection, and empowerment. Overall, the government is optimistic about the potential benefits and advantages this concept holds for MSEs. Notably, it offers several key opportunities, such as the separation of personal and company assets, improved access to banking services, and the facilitation of partnerships with third parties. Furthermore, the streamlined registration process, culminating in the issuance of an Individual Company certificate, is expected to deliver substantial benefits to business owners.<sup>9</sup>

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<sup>7</sup> Suhandi, Farid Ibrahim. "Business Entity Pre-Merger Notification Policy as Law Enforcement in the Industrial Revolution Era 4.0." *Lex Scientia Law Review* 3, no. 2 (2019): 129-142.

<sup>8</sup> Adinda, Fadhel Arjuna. "Penerapan Asas Keseimbangan dalam Klausula Baku Pada Perjanjian Pembiayaan di Lembaga Pembiayaan Kota Pekanbaru". *Thesi*. (Pekanbaru: Universitas Islam Riau, 2020).

<sup>9</sup> Kasih, Desak Putu Dewi. "Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal." *Arena Hukum* 15, no. 1 (2022): 20-37.

Individual partnerships which are a new form of legal entity are a *privilege* for MSE business actors to be able to develop their businesses. So far, MSE business actors have not paid much attention to the legality aspect in carrying out their business activities.

Some of the weaknesses of business actors who do not have a legal entity are:

- a. Unable to expand business either locally, nationally or internationally. When business actors want to expand their business, legal entities are an absolute thing that must be owned by business actors.
- b. The responsibility for business implementation carried out by business actors without legal entities and those with legal entities has different implications. Business actors who have a legal entity in running their business, the responsibility they have is only limited to the shares owned by the business actor, while business actors who do not have a legal entity are responsible for personal assets owned by business actors, this applies if legal problems occur in the future.

Another problem that causes Micro and Small Enterprises (MSEs) actors to not create a legal entity for their business activities is that Small and Micro Enterprises (MSEs) still feel that their business is still small, avoid taxes and in creating the Company in its management is long, long and takes a lot of money. Therefore, simplification of rules and breakthroughs in public services for Small and Micro Enterprises (MSEs) must be implemented<sup>10</sup>.

The capital criteria for establishing an Individual Company based on Government Regulation of the Republic of Indonesia Number 7 of 2021 concerning the Facilitation, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises that Meet the Criteria for Micro and Small Enterprises are:

#### Article 35

1. Micro, Small and Medium Enterprises are grouped based on the criteria of business capital or annual sales results.

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<sup>10</sup> Adinda, Fadhel Arjuna. "Indonesian Investment Law Politics Quo Vadis Omnibus Law: Politik Hukum Investasi Indonesia Quo Vadis Omnibus Law." *Jurnal Kajian Ilmu Hukum* 2, no. 2 (2023): 286-298.



2. The criteria for business capital as stated in paragraph (1) are used for the establishment or registration of business activities.
3. The criteria for business capital as referred to in paragraph (2) 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 where they do business;
  - b. Small Enterprises have a business capital of more than Rp. 1,000,000,000.00 (one billion rupiah) to a maximum of Rp. 5,000,000,000.00 (five billion rupiah) excluding land and buildings where the business is located; and
  - c. Medium Enterprises have a business capital of more than Rp. 5,000,000,000.00 (five billion rupiah) to a maximum of Rp. 10,000,000,000.00 (ten billion rupiah) excluding land and buildings where the business is located.
  - d. Medium Enterprises have a business capital of more than Rp. 5,000,000,000.00 (five billion rupiah) to a maximum of Rp. 10,000,000,000.00 (ten billion rupiah) excluding land and buildings where the business is located.
4. For the provision of facilitation, protection, and empowerment of Micro, Small, and Medium Enterprises in addition to the business capital criteria as intended in paragraph (2), the sales proceeds criteria are used.
5. The criteria for annual sales results as referred to in paragraph (4) consist of:
  - a. Micro businesses have annual sales of up to a maximum of Rp. 2,000,000,000.00 (two billion rupiah);
  - b. Small Businesses have annual sales of more than Rp. 2,000,000,000.00 (two billion rupiah) to a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah); and
  - c. Medium businesses have annual sales of more than Rp. 15,000,000,000.00 (fifteen billion rupiah) to a

maximum of Rp. 50,000,000,000.00 (fifty billion rupiah).

If in running an Individual Company no longer meets the above criteria, the Individual Company must change its legal entity status to a Capital Partnership Limited Liability Company if the shareholders become more than 1 (one) person and the Individual Company does not meet the criteria for micro and small enterprises (MSEs) as stipulated in the provisions of laws and regulations regarding micro and small businesses.

The change of the status of an Individual Company to a Limited Liability Company is carried out with a Notary Deed and registered through the online AHU. AHU online is an online public service system belonging to the Directorate General of Legal Administration, Ministry of Law and Human Rights. The change in the status of an Individual Company to a Limited Liability Company still poses legal uncertainty. The notary deed is important because it is an authentic deed that plays a role in creating legal certainty and can be used as a strong and full evidence in the eyes of the law because of its binding and perfect nature<sup>11</sup>.

This is because there is no system available for Individual Companies to upgrade to a Limited Liability Company on the online AHU electronic system. So that the available system can be considered imperfect. In practice, for the change of an Individual Company to a Limited Liability Company, the Individual Company is dissolved first and then changed to a Limited Liability Company with the same name. The legal consequences of the dissolution of a legal entity are certainly different from the legal consequences of changing the status of a legal entity from an Individual Company to a Limited Liability Company.

Law is part of a system in society in creating legal certainty, justice and order<sup>12</sup>. Therefore, the law does not stand alone, the synergy of other parts such as the community, the government, law enforcement officials, facilities and infrastructure as well as the substance of the law itself is needed. All of these parts must

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<sup>11</sup> Fauzi, "Kajian Yuridis Konsep Perseroan Perseorangan Sebagai Badan Hukum Perseroan Terbatas di Indonesia."

<sup>12</sup> Suhardin, Yohanes. "Peranan hukum dalam mewujudkan kesejahteraan masyarakat." *Jurnal Hukum Pro Justitia* 25, no. 3 (2007): 270-282.

synergize and must support each other to realize the objectives of the law<sup>13</sup>.

However, how ready are the legal instruments in Indonesia to overcome shortcomings and maintain their sustainability in the future. In fact, the chance of a conflict of interest in a Limited Liability Company established by 2 (two) people is very high. So it does not close the possibility that this Individual Company established by 1 (one) person will experience relevant things considering that the shareholder who also serves as a member of the board of directors.

## **B. Individual Company and Limited Liability Company: Different and Change Mechanism**

Individual companies have several advantages such as in their establishment there is no need to use a notary deed because the registration process can be done through the online Public Service System at the Directorate General of General Legal Administration or commonly known as online AHU, with a registration fee of Rp. 50,000 (fifty thousand rupiah), in the form of a legal entity with limited responsibility and in accordance with the activities of Micro and Small Enterprises (MSEs).

Very different from an Individual Company, a Limited Liability Company as one of the business entities lies in its position as a legal entity. Therefore, a Limited Liability Company is a legal subject that has more value in the eyes of the law than other business entities, both from economic and legal aspects. These two aspects complement each other.

A Limited Liability Company is a perfect form of business, both from an economic and legal perspective. A Limited Liability Company in terms of economy has been perfectly regulated by law, so that it can function as a perfect business entity<sup>14</sup>. Similarly, because this type of business entity is a legal entity, it has a position as a subject who is able to carry out legal acts as a

<sup>13</sup> Khairandy, Ridwan. *Perseroan Terbatas: Doktrin, Peraturan Perundang-Undangan dan Yurisprudensi*. (Yogyakarta: Total Media Yogyakarta, 2009).

<sup>14</sup> Nugroho, Eko Rial. "Politik Hukum Pembaharuan Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Kajian Pasal 74 beserta Penjelasannya)." *Jurnal Hukum Ius Quia Iustum* 21, no. 3 (2014): 485-506.

supporter of rights and obligations in the law<sup>15</sup>. Regarding who the subject of the law is, stated based on positive law that in today's society the subjects of law are human *beings* (*natuurlijk persoon*) and legal entities (*rechtspersoon*).

Concluded that the definition of a legal entity as a subject of law includes the following, namely: an association of people (organization), can carry out legal acts (*rechtshandeling*) in legal relationships (*rechtshandeling*), has its own property, has its own management, has rights and obligations, can be sued or sued in front of the court<sup>16</sup>.

To increase the competitiveness of business actors in improving the country's economy, the government through the Job Creation Law presents an Individual Company legal entity. An Individual Company is an individual legal entity that meets the criteria for Micro and Small Enterprises as stipulated in the laws and regulations regarding MSEs.

Article 153A of the Job Creation Law states that:

- a. Companies that meet the criteria for micro and small businesses can be established by 1 (one) person;
- b. The establishment of the Company for micro and small enterprises as intended in paragraph (1) shall be carried out based on a statement of establishment made in Indonesian;
- c. Further provisions regarding the establishment of the Company for micro and small enterprises are regulated by Government Regulations.

Article 6 of PP 8/2021 states that:

- a. An individual company is established by an Indonesian citizen by filling out a Statement of Incorporation in Indonesian.
- b. Indonesian citizens as referred to in paragraph (1) must meet the following requirements:

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<sup>15</sup> Satrio Frans Wicaksono, *Tanggungjawab Pemegang Saham, Direksi Dan Komisaris Pt* (Jakarta: Visimedia, 2009).

<sup>16</sup> Dewi, Sonia Candra, Moh Ali, and Bhim Prakoso. "Rekonstruksi Pasal 74 Undang-Undang Nomor 40 Tahun 2007 tentang Tanggung Jawab Sosial Perseroan Terbatas Terkait Kewirausahaan Sosial." *Jurnal Ilmu Kenotariatan* 1, no. 1 (2020): 77-92.

1. Minimum age of 17 years; and
2. Legal proficiency
- c. Individual companies obtain legal entity status after being registered with the Minister and obtaining an electronic registration certificate;
- d. Individual companies that have obtained the status of legal entities as intended in paragraph (3) shall be announced by the Minister on the official website of the Directorate General which carries out duties and functions in the field of general legal administration.

For Micro and Small Business actors in creating an Individual Company, it is not necessary to use a Notary Deed but is only limited to making a statement of incorporation in accordance with the format in the attachment to Government Regulation No. 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Change, and Dissolution of Companies that meet the Criteria for Micro and Small Enterprises.

The principle of establishing an individual company has long been known in various countries such as the United States, the United Kingdom, Singapore and several other countries. In a number of countries, the Sole Proprietorship model already exists with the terms *Single Member Private Limited Company* in the EU and UK, *Sendirian Berhad (Sdn Bhd)* in Malaysia, and *Private Limited Company (Pte Ltd)* in Singapore. Interestingly, countries such as Uganda, Ethiopia and Pakistan already know and have sole proprietorship regulations.

However, the concept of individual companies in these countries is not part of a legal entity, but a non-legal entity<sup>17</sup>. Individual Companies were created specifically for Small and Micro Enterprises (MSEs). Small and Micro Enterprises (MSEs) based on their history are able to survive crises and become the driving force of the economy in the community.

The birth of this Individual Company for Micro and Small Enterprises (MSEs) is part of raising the level of Micro and Small

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<sup>17</sup> Tektona, Rahmadi Indra, and Qoriatur Risma. "Penerapan Prinsip Character Dalam Pelaksanaan Prinsip Kehati-Hatian Pada Analisis Pemberian Kredit Usaha Mikro." *Batulis Civil Law Review* 1, no. 1 (2020): 1-13.

Enterprises (MSEs). So far, Micro and Small Enterprises (MSEs) have had difficulties in doing business and competing in a balanced manner with large business actors. This is because Micro and Small Business Actors (MSEs) do not get the facilities to upgrade their business to become a legal entity<sup>18</sup>. However, when Micro and Small Enterprises (MSEs) that use the legal entity of an Individual Company change into a large business, the legal entity of the Individual Company must change to a Limited Liability Company as regulated by Law Number 40 of 2007 concerning Limited Liability Companies. It must be made with a notary deed, shareholders of more than one person and a minimum authorized capital of Rp.50,000,000,- (fifty million rupiah).

Based on Article 17 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21 of 2021 concerning Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of Legal Entities of Limited Liability Companies, it is stated that if an individual company no longer meets the criteria for micro and small businesses and its shareholders become more than 1 (one) person, the Individual Company must be changed to a Limited Liability Company. Before becoming a Limited Liability Company, an individual company changed its status through a notary deed and was registered electronically

Companies that go hand in hand with time will definitely make changes. In article 153C of the Job Creation Law, it is explained that "Changes to the statement of establishment of the Company for Micro and Small Enterprises as referred to in Article 153A are stipulated by the GMS and notified electronically to the Minister".

Based on Article 153C of the Job Creation Law above, it is explained that the amendment of the Individual Company is determined by the GMS and notified to the Ministry of Law and Human Rights. The use of the word "GMS" in Article 153C is considered inappropriate in an Individual Company because

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<sup>18</sup> Mulyati, Etty, and Fajrina Aprilianti Dwiputri. "Prinsip Kehati-Hatian dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan." *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 134-148.

there are no other shareholders other than the founder of the company.

The GMS attended by one person in an Individual Company cannot fulfill its obligations in accordance with the principles of a Limited Liability Company as stipulated in the Limited Liability Company Law. This is because there is no quorum and consensus deliberation taken at the GMS. The GMS should contain the results of deliberations and votes from shareholders as stated in the notary deed. However, this is also not contradictory if the GMS is attended by 1 (one) person as it turns out in Article 90 of the PT<sup>19</sup>.

Article 153J of the Job Creation Law contains the doctrine of *piercing the corporate veil*, which means opening the company's curtain, where the originally limited liability is opened and broken through to unlimited liability to personal wealth in the event of violations, irregularities or errors in the management of the company. The legal consequence is the removal of limited liability to shareholders. The principle of *piercing the corporate veil* is a principle that justifies the elimination of limited liability to shareholders under certain circumstances.

The breakthrough of limited liability of shareholders through the principle of *piercing the corporate veil* is intended to prevent the abuse of legal protection provided to shareholders such as actions in bad faith, negligence, carelessness, contrary to the interests of the company and causing the company to experience bankruptcy.

At this time, if an Individual Company wants to change into a Limited Liability Company, it cannot be implemented perfectly. In the system provided by the Ministry of Law and Human Rights to change an Individual Company to a Limited Liability Company, until now it is not available so that if you want to change an

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<sup>19</sup> Hamzah, Rosyidi. "Penerapan Azas Kekeluargaan dan Keadilan Pada Penyelesaian Kredit Bermasalah Pada Pembiayaan Perumahan di Indonesia." *Journal of Economic, Business and Accounting* 3, no. 2 (2022): 404-411. For another cases, also see Auliandi, Rizky, and Mangatur Hadiputera Simanjuntak. "Defaults in Credit Agreements: How Are They Settled?." *Unnes Law Journal* 6, no. 1 (2020): 143-162; Maharani, Aulia, and Ahmad Khoiril Anwar. "Settlement of Debtors in Default in Credit Agreements with Movable Property Guarantees." *Jurnal Scientia Indonesia* 7, no. 1 (2021): 15-26.



Individual Company into a Limited Liability Company, the Individual Company must be dissolved first and then a Limited Liability Company is created through a Notary deed <sup>20</sup>.

In Article 9 paragraph 2 (two) of Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of the Company, it is stated that to change the status of an Individual Company to a Limited Liability Company is carried out through a Notary Deed and registered electronically. From the above provisions, to upgrade an Individual Company to a Limited Liability Company, there is no need for the dissolution of the Individual Company. The legal consequences of the dissolution of the Individual Company certainly have an impact on other things such as Taxpayer Identification Number (NPWP), Business Identification Number (NIB), Brand, Halal Certification, Account Number and so on.<sup>21</sup>

At the time of establishment of an Individual Company through an online system, it is integrated with several other related ministries. When an Individual Company is established, it automatically gets a Taxpayer Identification Number (NPWP) because it is directly connected to the system created by the Directorate General of Taxes (DGT), the Individual Company system is also automatically integrated with the Directorate General of Population and Civil Registration for population data verification and is integrated with *the Online Single Submission*

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<sup>20</sup> Hartono, Hartono. "Peran Notaris dalam Pendirian Perseroan Perorangan yang tidak Membutuhkan Akta Autentik." *Jurnal Multidisiplin Indonesia* 1, no. 3 (2022): 953-961.

<sup>21</sup> Marthalina, Marthalina, and Utami Khairina. "Sosialisasi dan Pendampingan Pembuatan Nomor Induk Berusaha (NIB) melalui Online Single Submission (OSS) kepada Pelaku Usaha Mikro di Desa Sukahayu Kecamatan Rancakalong Kabupaten Sumedang." *Civitas Consecratio: Journal of Community Service and Empowerment* 2, no. 1 (2022): 51-63. See also Islamy, Ilma Maulana Fitra, and Anita Indah Widhiastuti. "Socialization of Business Identification Number Towards MSME's Sustainability in Tambakrejo Urban Village, Gayamsari Subdistrict, Semarang City." *Jurnal Pengabdian Hukum Indonesia* 6, no. 2 (2023): 237-251; Rochman, Auliya. "How does the government reduce unemployment? Legal Policy Analysis of the Government's Role in Strengthening SMEs in Indonesia." *Unnes Law Journal* 7, no. 2 (2021): 319-332.



(OSS) system for the issuance of Business Identification Numbers (NIB)<sup>22</sup>.

Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of the Company states that to change the status of an Individual Company to a Limited Liability Company is carried out through a notary deed and registered electronically to the Minister.

In principle, an Individual Company is the same as a human being, namely being able to perform legal acts and having a legal personality. When a human dies, those attached to the human also die, such as Identity Cards (KTP), Taxpayer Identification Numbers (NPWP) and Account Numbers. Likewise, if an Individual Company has been dissolved, those attached to the Individual Company will also be dissolved.

Of course, this is complicated for business actors because they have to repeat the process from the beginning such as NIB, NPWP, Halal Certificate, Account Number and others because in principle, a dissolved Individual Company and a newly created Limited Liability Company are two different entities. Even though the spirit of the Individual Company is to provide opportunities for Small and Micro Business actors to upgrade, if the Individual Company develops, then to raise the P class, Micro and Small Enterprises (MSEs) must change to a Limited Liability Company.

The formation of legal norms in the field of Individual Companies should also be accompanied by changes in the system. The legal norms governing the establishment, amendment and dissolution of an Individual Company must be supported by a system that is in accordance with the intention and philosophy of the Individual Company. No matter how good the law is made without the ringing of system development, it still cannot run perfectly<sup>23</sup>.

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<sup>22</sup> Tektona, Rahmadi Indra, and Dwi Ruli Handoko. "Implikasi Hukum Pailitnya Perseroan Perorangan Terhadap Direksi di Indonesia." *Jurnal Ilmiah Dunia Hukum* 6, no. 2 (2022): 115-129.

<sup>23</sup> Darianto, Nofarid. "Kedudukan Organ Perseroan Perorangan Pada Usaha Mikro Dan Kecil Berdasarkan Undang-Undang Cipta." *Jurnal Education and Development* 11, no. 1 (2023): 225-229.

The parts do not stand alone, but are a system. The legal system is complete and complements the legal regulations. The problems that often occur are hyper-regulation, *conflicting*, *overlapping*, multi-interpretation, *inconsistency*, ineffective, creating unnecessary *burdens*, and creating a high-cost *economy*<sup>24</sup>.

One of the principles in the formation of a good law is the principle of "*Lex Dispositiva*" or the principle of being implemented. Through this principle, it is hoped that the creation of legal norms can be enforced. A rule must be supported by supportive social conditions, adequate facilities for organs or organizers who will implement a regulation. The experience that has occurred in the implementation of laws in Indonesia shows that many laws have been declared valid and promulgated, but then cannot be implemented.

As an effort to encourage the economic growth of the lower middle class, the Indonesian government has issued Government Regulation No. 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises as a direct impact of Law Number 11 of 2020 concerning Job Creation<sup>25</sup>.

The existence of the Government Regulation certainly changes the paradigm of the corporate law system. In Law Number 40 of 2007 concerning Limited Liability Companies, *expressive verbally* explains that an Individual Company is a legal entity that is a capital partnership, negotiated based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and meets the requirements set forth in this Law and its implementing regulations.

It can be interpreted that the terms "Persero" and "Limited" each carry distinct meanings. The term "Company" refers to the capital structure in a limited liability company, which consists of

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<sup>24</sup> Siregar, Imastian Chairandy, et al. "Tanggung Jawab dan Tata Kelola Perseroan Perorangan Sebagai Badan Hukum Baru di Indonesia." *Locus Journal of Academic Literature Review* 1, no. 1 (2022): 26-35.

<sup>25</sup> Harahap, Yuliana Duti, Budi Santoso, and Mujiono Hafidh Prasetyo. "Pendirian Perseroan Terbatas Perseorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja." *Notarius* 14, no. 2 (2021): 725-738.

shares or "sero." Meanwhile, the word "Limited" denotes the limited liability imposed on shareholders, restricting their financial responsibility to the value of their shares. In other words, the individual holding the shares is referred to as a Persero, while the entity issuing the shares is called the Company.<sup>26</sup>

In the concept of capital association, there is at least 2 people who are made in the form of a notary deed agreement. The agreement on the formation of the limited liability company must contain the Company's articles of association. For the establishment capital of a Limited Liability Company, it has been determined that at least Rp. 50,000,000 (fifty million rupiah) is placed and deposited in the company's account.

Paradigm change. This Corporate Law occurs when there are changes and additions to corporate provisions in the Job Creation Law. This change is intended to minimize the occurrence of overlapping regulations and accelerate the acceleration of national economic development by empowering the Micro and Small Enterprises (MSEs) sector<sup>27</sup>.

The Empowerment of Micro and Small Enterprises (MSEs) aims to provide opportunities to be able to develop MSE businesses that have been doing business without a forum in this case a legal entity. The presence of an individual legal entity in the form of an individual company will have a significant impact on the national economy. Prior to the regulation of individual companies, the Ministry of Cooperatives and Small and Medium Enterprises (MSEs) stated that MSEs as the driving force of the economy had contributed greatly to GDP (gross domestic product) of 61.07% or if rupiah equivalent to Rp. 8,573.89 trillion rupiah. Because of this, the MSE-M sector is able to absorb a total of 97% of the total workforce, and has an impact in terms of investment by collecting up to 60.42% of the total investment in Indonesia<sup>28</sup>.

<sup>26</sup> Kusuma, Dimas Cahya. "Pertanggungjawaban Perseroan Perorangan Pasca Pergeseran Paradigma Perseroan Terbatas Sebagai Persekutuan Modal." *Lex Renaissance* 7, no. 3 (2022): 476-490.

<sup>27</sup> Darianto, "Kedudukan Organ Perseroan Perorangan Pada Usaha Mikro dan Kecil Berdasarkan Undang-Undang Cipta."

<sup>28</sup> Putri and Tan, "Analisis Yuridis Perseroan Perorangan Ditinjau Dari Undang-Undang Cipta Kerja dan Undang-Undang Perseroan Terbatas."

Although the businesses run are categorized as medium and small, the resulting impact is the basis for the Indonesian government to provide a legal umbrella to make it easier for MSEs to expand their business activities. Of course, this starts with starting a business for MSEs that have not had clear legality so far.

The ease of establishment of an individual company is not only for establishments that do not involve a Notary, but also about the Shareholders and the capital invested in establishing an individual company. An individual company is only established by one person. The person who established the company is a shareholder as well as a commissioner and director of the company. Meanwhile, in relation to capital, it does not have a minimum value in its establishment and deposit, thus providing an opportunity for MSEs to start a business with only the minimum capital.

Apart from the advantages of individual regulation, juridically this still has a gray area that will be a problem in the future. If the UUPT has regulated the Company's Organs, the Role of Notaries, Establishment, Acquisition, Merger to the dissolution of a limited company. However, the core problem in this study related to individual companies is when the business of MSEs has exceeded the stipulated limit of Rp. 15,000,000,000 (fifteen billion rupiah) annual turnover and will raise the status from an Individual Company to a Limited Liability Company, but currently there is no clear mechanism in regulating this<sup>29</sup>.

When an individual company has exceeded the sales revenue of Rp. 15,000,000,000 (fifteen billion) per year, then of course it is no longer in accordance with the status and criteria of its MSE-M. For this reason, it is necessary to change the form of its legal entity status so that business activities that are carried out in the future after exceeding the provisions mentioned above can be legally protected.

The business world has volatile dynamics. When the market is good, the business will get the greatest profit in accordance with the business field being run, and vice versa when the business is not in accordance with the market's wishes,

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<sup>29</sup> Kornelis, Yudi. "Implikasi Hukum Perseroan Perseorangan Terhadap Indeks Ease of Doing Business Indonesia." *Jurnal Yustisiabel* 6, no. 2 (2022): 132-152.

the business that is run can suffer very significant losses<sup>30</sup>. In addition, MSEs that benefit from running their business and have exceeded the maximum annual income limit set according to the UMK-M criteria, then a restructuring and/or reorganization of the legal entity is required. This is done to maintain the Company's stability so that it is still able to compete both at the local, regional and international levels.

At this time, if an individual company has exceeded the provisions to be called an individual company, of course it must change the individual company to a limited liability company in general. Currently, the Ministry of Law through the Directorate General of General Legal Administration (*Administrasi Hukum Umum*, AHU) has provided a system that can be accessed by the general public, not only related to the establishment of individual companies, but also for other interests, such as Trademarks, Copyrights, Patents and the like<sup>31</sup>.

Regarding this change in the individual company, the existing system is inadequate. The inadequacy of the AHU system is related to the change in the form of an individual company to a limited liability company in general. So that if there is a change, it must be with the mechanism of dissolving the individual company first, then establish a limited liability company of capital partnership through the establishment of a notary deed.

The imperfection of this system creates legal uncertainty for the founders of individual companies and is also not in line with the effectiveness of the law. Legal uncertainty relates to if an individual company has registered its trademark, patent for its business and other matters related to the business being run, then when there is a dissolution of an individual company to become a limited liability company of capital partnerships, brands, patents that have been registered in the name of the individual company do not have legal certainty, whether it will be part of a limited liability company of capital partnership in the

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<sup>30</sup> Sulistiyono, Adi and Muhammad Rustamaji. *Hukum Ekonomi Sebagai Panglima* (Sidoarjo: Masmedia Buana Pustaka, 2019).

<sup>31</sup> Sukardi, Dina Haryati, Dwi Nurahman, and Muhadi Muhadi. "Optimalisasi Peraturan Pemerintah Nomor 7 Tahun 2021 dalam Peningkatan Perekonomian Daerah Melalui UMKM." *Jurnal Pengabdian UMKM* 1, no. 1 (2022): 52-56.

context of renewal Individual company, or remains an integral part of the dissolved individual company.

If trademarks, patents and others that have been registered when the individual company still exists, and become an integral part when the dissolution of the individual company occurs and the establishment of a limited liability company of capital partnership, this will have an impact on legal ambiguity that has implications for the business field that has been carried out by the individual company.

The business world by building with trust<sup>32</sup>. Consumer confidence in choosing a product carried out by a company is more or less influenced by the trademark attached to the business. When it experiences dissolution and becomes a capital partnership limited liability company and must start from scratch on brands, patents and the like related to the business world that has been run, it will interfere with the smooth running of the existing business and have an impact on the non-bona fide of the capital partnership limited liability company established as a result of the dissolution of the individual company<sup>33</sup>.

Apart from that, when this happens, it will have an impact on the ineffectiveness of the applicable legal arrangements related to the individual company. The government, in addition to trying to move the wheels of the economy from MSEs, should also realize that the existence of a clear set of rules will be very helpful and beneficial for the continuity of the business that has been run. It is impossible for the trademarks and patents of an existing business to undergo changes just because there is no adequate system available to anticipate this happening.

Although there is an adage, "*Het recht hinkt achter de feiten aan*," which means that legal science often lags behind the developments occurring within society<sup>34</sup>, which is caused by the

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<sup>32</sup> Hamzah, Rosyidi, and Fadhel Arjuna Adinda. "The Existence of a Norm Regarding the Execution of Fiduciary Guarantees After the Issuance of the Constitutional al Court Decision Number 18/PUU/XVII/2019." *Jurnal Penelitian Hukum De Jure* 22, no. 1 (2022): 81-92.

<sup>33</sup> Hamzah, Rosyidi, et al. "Imperfect Information of Bankers Clause in Credit Agreements in Banking Institutions: Further Legal Impact." *Lex Scientia Law Review* 7, no. 2 (2023): 529-568.

<sup>34</sup> Admiral, Admiral, and Mega Ardina Pauck. "Unveiling the Dark Side of Fintech: Challenges and Breaches in Protecting User Data in Indonesia's Online Loan Services." *Lex Scientia Law Review* 7, no. 2 (2023): 995-1048.

dynamics of changes in society, it is not appropriate if it is used as an excuse not to pursue it. When there is ambiguity and emptiness of technical norms such as the problems in this study, the government should respond quickly and responsively so that the emptiness and ambiguity of norms does not drag on.

### C. Conclusion

In order to accelerate national development, particularly in advancing the downstream economy through the growth of Micro and Small Enterprises (MSEs), it is crucial that the government carefully considers the prevailing conditions at the time of regulation formation and implementation. This consideration should include assessing whether any gaps, ambiguities, or legal uncertainties might arise, which could undermine legal certainty.

Concerning the dissolution and establishment of individual companies into limited liability capital partnerships, which meet the criteria and requirements for MSEs, it is imperative for the government to reformulate Government Regulation No. 8 of 2021 on Company Authorized Capital and the Registration of Company Establishment, Amendments, and Dissolution for MSEs. The reformulation should explicitly include provisions that address the legal implications during the dissolution and establishment of an individual company into a limited liability capital partnership. Specifically, it should ensure that all legal acts and consequences occurring prior to the dissolution and re-establishment of the company remain legally binding and attached to the parties involved, including business identification numbers, trademarks, patents, and other rights. Moreover, in addition to revising existing regulations, the government must enhance the General Law Administration System to facilitate greater integration with other relevant systems. This integration is essential to foster legal certainty and ensure seamless coordination among various legal and regulatory frameworks.

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See also Johan, Suwinto. "Financial Technology Company's Debt Collection Method: A Legal Aspect." *Unnes Law Journal* 8, no. 1 (2022): 1-20; Tiara, Zalna, and Kuku Tejomurti. "Efficiency of implementation of alternative dispute settlement for fintech lending users." *Jurnal Scientia Indonesia* 8, no. 1 (2022): 37-52.



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