

JURIDIC ANALYSIS OF INDEPENDENT COMPANY ESTABLISHMENT POST GOVERNMENT REGULATION NUMBER 8 YEAR 2021

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ABSTRACT

Abstract An individual company is a business entity that is a legal entity and is independently providing a glimmer of hope for the community in the form of convenience in the establishment, change, revocation of the company, and the legality of an individual company. In article 1 number 1 of Government Regulation Number 8 of 2021 it is stated that individual legal entities meet the criteria for micro and small businesses as stipulated in article 2 paragraph 1 letter b that the establishment of an individual company can be established by 1 (one) person by taking legal action in the form of making an electronic statement of the establishment to the minister, research problems on how to change the company, dissolution of an individual company after Government Regulation Number 8 of 2021, what is the legality and position of a sole proprietorship after Government Regulation Number 8 of 2021.

Keywords: Changes, dissolution, legality of individual companies.

INTRODUCTION

A sole proprietorship is a business entity that is present in everyday life. The presence of a sole proprietorship is one of the steps of economic activity that has long been a part of life. In carrying out business by entrepreneurs in the form of goods delivery service providers, implementing services in the progress of building infrastructure in the form of a company as a business entity. Doing business using common individuals, micro, small business entities. A sole proprietorship is the preferred form of economic activity today.

In the speech of President Joko Widodo, he stated that related to the plan to form a new law in the form of facilitating the establishment of employment opportunities to empower Micro, Small and Medium Enterprises. Through the design, it was created to facilitate every legal subject to set up a business in Indonesia. In its development, the design is included in the nomenclature of job creation.

The draft law on job creation is a volatile global economic change and countries respond quickly and appropriately through policies, to generate economic growth in the community. With the policy, it is expected to realize economic changes in all sectors to encourage quality economic growth, the better the quality of production, the increase in consumer demand or purchasing power and followed by an increase in wages.

The birth of the new Law on Employment Creation, there are arrangements for the ease of opening a business for MSMEs and the ease, empowerment, and protection of MSMEs. Ease of setting up Micro and Small Companies. This form of business is not for

medium-sized businesses. Regarding Job Creation, it has been regulated in article 153A that:

A sole proprietorship may be established by one person through a statement in Indonesian which has a period, purpose and objective of establishment, type of business activity, as contained in government regulations.

An UMKM sole proprietorship can be called a sole proprietorship which will be proposed to be regulated in a Government Regulation. UMKM Individual Company without using the Deed of Establishment, but only making a statement of company establishment in Indonesian to the minister and ratified electronically by the Minister of Law and Human Rights for free.

Government regulations, especially the implementation in making it easier for every legal subject to establish a sole proprietorship in the form of a legal entity, is a policy of the government to improve the welfare of its people through the business sector of Micro, Small, and Medium Enterprises.

As for the establishment of a Limited Liability Company at least 2 (two) people, have an authorized capital of 50 million, and have an internal organization of a limited liability company and have duties and functions and responsibilities.

In making decisions on the company's activities through the General Meeting of Shareholders who have full authority, it is not given to the directors or the board of commissioners as stipulated in the limited liability company law or the articles of association. This forum is the best method for making decisions.

Individual companies are legal entities in running the company's wheels, which are well-formed by management, while the management of individual companies, namely directors and shareholders, directors and shareholders are the same person, every business activity is legally accountable which is focused on individual companies.

Based on the explanation of the material about sole proprietorships above so that researchers are interested and very intrigued in the thought of research, they will write a fundamental and in-depth scientific paper with the title "Juridical Analysis of the Establishment of a Sole Proprietorship After Government Regulation Number 8 of 2021"

CONCEPTUAL FRAMEWORK

Analytical descriptive research is to explain and explain the changes, dissolution, and legality of sole proprietorships. related to the type of research the researcher uses normative juridical where the research is based on laws and regulations, government regulations, theories, doctrines.

This study is to analyze the applicable government regulations, relating to changes, dissolution, and legality of a normative individual company or literature research.

Primary Legal Material, Primary legal materials are in the form of required laws and government regulations. Secondary legal material, Secondary legal materials are legal materials, namely books, theses, dissertations, legal journals, legal reports, papers, and printed or electronic media that can describe problems. Tertiary legal materials.

Supporting materials, pointers in research in the form of dictionaries, dictionaries, articles, magazines, and online media on the internet to complete the data.

DISCUSSION

A sole proprietorship is a company that is owned by a sole proprietor and has full control over the business and separates the company's assets from personal assets. Every legal subject can freely develop, establish an individual business entity either using a permit or without a permit with certain procedures.

Individual Company in the form of MSME which is regulated in a Government Regulation as a company incorporated as a legal entity conducting business activities with authorized capital is regulated in government regulations and articles of association regarding Micro and Small Enterprises.

Establishment of a Limited Liability Company based on Law Number 40 of 2007 concerning Limited Liability Companies. In a company consisting of shares or what is often referred to as capital and borne by allies of shareholders. The term company is the capital consisting of shares, and the term-limited is the limitation of the shareholder's authority on the number of shares owned.

The term Limited Liability Company is currently very familiar and common in society. Limited companies engaged in business are very many in the world, one of which is Indonesia which designs in the form of a legal entity whose nature, quality is very much different from other businesses. One of the differences between a Limited Liability Company and other business entities is the separation of the owner's personal assets from the limited liability company's assets.

Limited Liability Company is a partnership company that was born in a legal action in the form of an agreement to run a company with authorized capital to seek benefits, as much profit as possible in the form of material.

As a limited liability company, you must have an organized organization to run, manage the company as well as possible to achieve the company's own goals. In general, the establishment of the Company must meet the applicable terms and conditions, namely:

Minimum 2 (two) people or more, the main capital is Rp. 50,000,000,- and the paid-up capital is at least 25% of the main capital, which is stated in the agreement letter/deed of establishment of an Indonesian-language company, the deed of establishment registered with the Minister of law, and human rights, to obtain an establishment permit and the operation of the company.

Changes to Individual Companies After Government Regulation Number 8 of 2021, Companies are recognized by the Employment Creation Act on changes to Limited Liability Companies, in which case there are characteristics of Individual Companies based on government regulations.

An individual company that has obtained certificates and permits electronically from the minister to carry out business activities as stated in the contents of the statement letter that has been submitted to the ministry.

The legitimacy of an individual company that is a legal entity must first obtain a certificate and permission from the minister of law and human rights so that it can carry out legal actions absolutely on a legal entity that has been established. In addition to running the company, both shareholders and directors are the same and single person.

Every legal action in the form of a change in the establishment of a sole proprietorship can be carried out more than 1 (one) time. Changes to a sole proprietorship can be made by attaching a statement of changes to the company written in Indonesian and submitted to the ministry electronically.

The contents of the changes that can be done there are 2 (two)

1. Sole Proprietorship to Sole Proprietorship.

Changes in the company occur as a result of the personal wishes of the shareholders without any coercion from any party. Changes here are only in the form of the name of the individual company, the place, the location of the company, the addition of the time the company was founded, the purpose and objectives of the company, the amount of authorized capital, issued and paid-up capital, nominal value and number of shares.

Full name, place, and date of birth, occupation, place of residence, identification number, and tax identification number of the founders as well as directors and individual shareholders of the Company.

The change from a sole proprietorship to a sole proprietorship can be done by making a statement in Indonesian electronically submitted to the ministry.

2. Sole proprietorship to limited liability company.

If a sole proprietorship wishes to change into a limited liability company, the provisions of the change shall return to the provisions of the Limited Liability Company Law.

In the company, the problems that arise the company are caused by the management of the company and the company's administrative factors. The factor of poor management so that it has an impact on the revocation of the company's operating license, resulting in the assets of the bankrupt company. While the administrative factor is the expiration of the extension of the operating period of activity of the company based on the articles of association of the company, it can be said that the operating license has expired.

It should be realized that the dissolution of the company is good when the company's license expires, the revocation of the license must first conduct the dissolution of the company through a forum based on the decision of the General Meeting of Shareholders. Often the dissolution of the company at the suggestion of the company's organs for various reasons depending on the point of view of each.

Revocation of Limited Liability Companies based on Law Number 40 of 2007 concerning Limited Liability Companies, As the researcher understands, the dissolution of a company that is a legal entity has been regulated in such a way in the Limited Liability Company Law. when dissolution occurs through:

General Meeting of Shareholders, based on decisions made based on several legal considerations when the company's operating time runs out in the articles of association, the court's decision to revoke the company's assets through the commercial court and declared bankrupt and has permanent legal force. , the company's assets are not sufficient to pay bankruptcy costs and delay the obligation to pay debts so that the company's business license is revoked.

Dissolution of Individual Company after Government Regulation Number 8 of 2021, According to article 13 paragraph (1), the dissolution of an individual company is entirely at the decision of the shareholders as outlined in a written statement in Indonesian, while the affidavit of dissolution in an individual company has legal equality with the general meeting of shareholders in a limited liability company. Regarding the disbandment statement and submitted electronically to the Minister of law and human rights.

Regarding the background of the dissolution of the individual company, the decision of the shareholders of the individual company, the expiration of the term of the company which has been stated in the statement letter of the company's establishment, and the articles of association of the individual company, the decision, the decision of the commercial court that has gone bankrupt against the individual company so that the company is not sufficient to pay the costs. bankruptcy, the bankruptcy estate of an individual company is declared bankrupt as regulated in the law concerning bankruptcy and suspension of debt payment obligations; and, the license of the individual company is revoked so that the individual company disbands by filling out a statement of dissolution submitted to the minister via electronic means.

The role of organs in limited liability companies with organs in individual companies after government regulation number 8 of 2021, The organization in the company is very basic for a good company, the company has a structure consisting of the General Meeting of Shareholders, the Board of Directors, and the Commissioner. The company's organization itself is regulated in the company's Articles of Association, the company's Bylaws, and the decisions of the General Meeting of Shareholders.

Limited Liability Company is a Legal Entity, the establishment of a company is an agreement by mutual agreement of the parties by running a business with authorized capital to seek profit both individually and in groups, and fulfills the requirements as stipulated in the law.

In addition to the Limited Liability Company as a legal entity, the company is a legal subject that can take legal action to carry out obligations and obtain equal rights in the eyes of the law that can be sued or sued in court.

The organs of the company have rights and obligations, the responsibilities of each organ are very different.

1. Shareholder Responsibilities.

The shareholders' organs are so important, why is that because from the very beginning, the sustainability of the company, the development of the company are the result of the persistence and tenacity of the shareholders in building the company. And has the right to share the profits of the company's assets annually, as regulated in the articles of association and by-laws of the company. in a company that the shareholders have considerable responsibility in making decisions on the company, a public forum for shareholders to run, develop and advance and dissolve the company.

2. Responsibilities of directors

The duties of the board of directors have considerable responsibility for the management, management of the company to achieve the company's goals, as well as being the company's representative in each of the company's problems, both litigation, and non-

litigation as stipulated in the articles of association. two functional at the same time in the form of management and representatives of the Limited Liability Company.

It is known that the Board of Directors as the Management is tasked with internally by the Company to carry out business activities to achieve the company's goals as well as possible, while the representative duties carried out by the directors are in the form of being present to represent the external company by carrying out relationships by third parties and resolving company problems both by consensus and court.

3. Responsibilities of the Commissioner.

The organ in charge of carrying out supervision and advisory to the board of directors in carrying out the management, management of the company is the board of commissioners authorized to examine reports in the form of company documents and directly enter the company office. provide advice, input to the board of directors to run the company. The board of commissioners has full authority over the policies of the Board of Directors in managing the company with the approval, and temporarily suspends the directors in the management of the company.

The Loss of the Notary's Role in the Establishment of Micro and Small Business Individual Companies. The provisions of Article 6 of Government Regulation Number 8 of 2021 explain that the establishment of a Micro and Small Business Individual Company without involving the role of a Notary and only making a Statement of Establishment. Making a statement on the establishment of an individual company can be made by 1 (one) person easily by filling out the electronically available form. Of course, the Declaration of Establishment is not categorized as a deed of agreement of the parties to the establishment.

The establishment of the Company is currently quite easy, legality is guaranteed and the identity of the founder is the company's basic need. If you do not have a legal company, there will be doubts in the community and there is a risk of committing acts against the law and must be legally accounted for. To guarantee legal protection, legal certainty for the founders of the company must fulfill the conditions for the establishment of the company.

The loss of the role of a notary in the establishment of a private company with a legal entity is due to the government's policy to change the regulations in establishing a company more easily and save time for legal subjects who want to establish a company by taking advantage of the current developments.

Legality and Position of Individual Company After Government Regulation Number 8 of 2021. The legal entity of a sole proprietorship is very important, the legality of a sole proprietorship is a special identity. In the case of the establishment of a Micro and Small Business individual company, there is no physical document that must be provided to the government, only in the form of a scan of the document, and the party signing the statement cannot be sure that the document has been directly signed by the party concerned. Thus, there is no need for a notarial deed related to the establishment of a Micro and Small Business individual company, which will ensure legal certainty.

Legally, a sole proprietorship that has fulfilled the elements of micro, small and medium enterprises must meet the requirements for the establishment of a private company for micro, small and medium enterprises

Individual companies are only intended for Indonesian citizens who are at least 17 (seventeen) years of age and are legally capable, not under guardianship, and able to take legal responsibility for all legal actions.

An individual company will get the status of a legal entity after registering the establishment of a sole proprietorship by making a statement letter on the establishment of a sole proprietorship in Indonesian and signed and then registered with the Minister of Law and Human Rights electronically and obtaining a certificate of establishment permit electronically again from the Minister of Law and Rights. human rights. Then the individual company becomes a legal entity, and the Minister officially announces the directorate general in the field of general law administration.

CONCLUSIONS

1. Based on the results of the analysis conducted by the researchers on the change in the establishment of a sole proprietorship, the change in the company is carried out by the shareholders through the general meeting of shareholders and meeting the forum. Meanwhile, in the change of individual establishment, only attach a statement of change of company to the meter electronically.
2. Based on the results of the analysis carried out by the researcher on the revocation, dissolution, of a sole proprietorship, namely in the dissolution of an individual company due to a decision taken by the shareholders of an individual company, the expiration of the operational period of the company as stated in the basic constitution of establishment or its amendments, the determination or decision of the bankruptcy court has had permanent legal force.
3. Based on the results of the analysis conducted by the researcher on the legality and position of the individual company, it must meet the requirements for the establishment of an individual so that legality is guaranteed and gets the same protection as a micro and small business legal entity.

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