

## EFFECTIVENESS OF REGISTRATION OF MICRO AND SMALL BUSINESS LIMITED LIABILITY COMPANIES AFTER THE ENTRY INTO FORCE OF GOVERNMENT REGULATION NUMBER 8 OF 2021

Heriyanti<sup>1</sup>, Elvira Fitriyani Pakpahan<sup>2</sup>, Lenny Maria Aritonang<sup>3</sup>

<sup>1</sup>Universitas Prima Indonesia, heriyanti@unprimdn.ac.id

<sup>2</sup>Universitas Prima Indonesia, elvirapakpahan@unprimdn.ac.id

<sup>3</sup>Universitas Prima Indonesia, lennymaria90@yahoo.com

### ABSTRACT

The government established a Draft Law cipta Kerja has the aim of making it easier for businesses in Indonesia to set up their businesses. This draft law is one of the urgency that is expected to be a barometer increase in the business world where Indonesia is still fifth in ASEAN. This is what makes the government always make regulations so that the community is easier in setting up its business, especially for Micro and Small Businesses. The Work Copyright Bill contains many additional rules, especially those related to the founder of a business entity. One of the things that is considered by the government to facilitate the community in setting up a business is by forming a new type of business entity, namely Individual Limited Liability Company (Micro and Small Business) that can be established only by 1 (one) person. With the hope that it can make it easier for businesses, especially micro and small businesses in setting up their businesses by facilitating the terms and minimizing capital.

**Keywords:** Individual companies, Micro and small enterprises, Notaries, Authorities, Cooperation.

### INTRODUCTION

A limited liability company is a legal entity in the form of a capital alliance established by an agreement between 2 (two) or more persons conducting business activities with basic capital where all the authorized capital is divided into shares and regulations and the requirements are stipulated in Law Number 40 of 2007 concerning Limited Liability Companies, hereinafter referred to as the Law of Limited Liability Companies.

In the Law of Limited Liability Companies it is said that Limited Liability Companies must be established by a minimum of 2 (two) people or more. But this rule does not apply to Limited Liability Companies of State-Owned Enterprises or Limited Liability Companies stipulated in Law No. 8 of 1995 concerning Capital Market, among others, Depository Institutions, Clearing and Guarantee Institutions, Stock Exchanges and others.

Some time ago, Indonesia was warm to the existence of Law Number 11 of 2020 on Copyright Work, for the next will be called the Copyright Act which is included in 49 (forty-nine) regulations of its implementation. The most dominant discussed is the existence of a new type of business entity. Types of business entities made to facilitate micro and small businesses in setting up their businesses.

In Article 153A of the Copyright Act, it is stated that those included in micro and small businesses are companies established by 1 (one) person. The Company for Micro and Small Enterprises is further regulated in Government Regulation Number 8 of 2021.

In the Law of Limited Liability Companies it is said that the Limited Liability Company was established by 2 (two) persons and by Notarial Deed. So the founders will take part in their respective shares in the company. This provision is a reasonable thing because a Limited Liability Company is a Legal Entity in the form of a capital alliance established by an agreement. So according to the Law, Limited Liability Company is an agreement. Therefore, the Company cannot be established only by 1 (one) person because the law cannot bind the promise of the person who promises for himself. That is why in establishing a Limited Liability Company there must be at least 2 (two) people who promise each other.

Facilitating businesses in invention is the government's goal to form a Micro and Small Business Individual Company. Businesses that will establish individual companies above 2019 to obtain a Business Parent Number (NIB) through Online Single Submission (OSS) must be subject to the Copyright Act and Government Regulation No. 8 of 2021. This shows so much government support in facilitating businesses in Indonesia.

## METHODOLOGY

In compiling and discussing the problems of this research, writing uses normative juridical methods where library material becomes the basic material to be researched by tracing rules and literature related to existing problems.

## DISCUSSION

### A. Form of Establishment Arrangement of Individual Companies after the Enactment of Government Regulation Number 8 of 2021

Each Country has a different way of providing definitions of micro and small businesses. Usually every country measures it by the progress of a country's economy. Usually each country classifies a micro and small business based on several aspects, namely income, number of assets and number of workers.

Micro and Small Businesses can be distinguished based on the interests of their institutions. The following are categorized in Micro and Small Enterprises:

1. Small Business if :  
Number of Assets :  
> **Rp. 50.000.000.-** - **Rp. 500.000.000.-**  
Total Turnover :  
> **Rp. 300.000.000.-** - **Rp. 2.500.000.000.-**
2. Micro Business if :  
Number of Assets :  
Maximum **Rp. 50.000.000.-**  
Total Turnover :  
Maximum **Rp. 300.000.000.-**

Micro and small businesses have several characteristics, namely :

1. Raw materials are easy to get
2. Using simple technology
3. Using simple skills (usually done continuously in society)
4. Labor intensive (using a considerable workforce)
5. Broad market prospects
6. Usually the resulting product is characteristic of local culture
7. The labor used is usually the local community

In Indonesia itself micro and small businesses have a crucial role, so the government always strives to ease the number of micro and small businesses increasing. The important role of micro and small businesses in Indonesia, namely :

1. In the community, micro and small businesses become a medium to level the national economy.
2. Help open jobs.
3. Increase the country's foreign exchange in export and import activities.
4. Make the community more independent.

Types of micro and small businesses also have several advantages compared to large-scale companies, namely:

1. The process of applying for a business license is easier.
2. Smaller business capital.
3. Product innovation and business operations are easy to do by following the times or the wishes of the business itself.
4. With the right business planning, there is a greater opportunity to quickly develop.
5. Operational activities are more flexible and customizable.
6. This type of business usually sees emerging market opportunities.

Micro and small businesses are usually included in the informal sector labor market because it has several characteristics, namely simple business activities, small business scale, lack of business izi, low income level, using traditional tools and very diverse businesses. This also makes it difficult for banks to provide loans because it is considered to have a high risk (bad credit).

Since the Copyright Act was enacted, there has been a lot of controversy. There are 49 Implementing Regulations made by the Government. One of them is about the procedure of establishment of an individual limited liability company. But the Copyright Act only provides the criteria without explaining in more detail so that the government issued a Government Regulation (PP) to provide a detailed explanation.

In the Copyright Act, the understanding of the Company is almost the same as that written in the Law of Limited Liability Companies only there are additional criteria regarding Micro and Small Enterprises.

In the Law of Limited Liability Companies in establishing a limited liability company must be carried out by a minimum of 2 (two) people or more while in the Law of Copyright Work in establishing an Individual Company can be established only by 1 (one) person only, Indonesian citizens, aged at least 17 years and capable of law. This is certainly beneficial for businesses in setting up and running their businesses. This can increase competitiveness and attractiveness in the business world.

Individual companies do not use the deed of establishment of a notary public, carried out by making a statement in accordance with the applicable provisions. The statement letter is registered online to the Minister of Law and Human Rights of the Republic of Indonesia with the following details:

1. Name and place of position
2. The period of establishment of the Purpose and purpose and business activities
3. The amount of authorized capital, issued capital and paid-up capital
4. Total shares and par value
5. Address
6. Full identity and Taxpayer Identification Number of founders, directors and shareholders

After the Statement Letter is sent and registered, it will be given legal entity status by providing a certificate of registration online which is then announced in the <https://ahu.go.id> page. After obtaining the certificate of establishment statement, the company must print the statement independently using white paper with the size of F4. However, before obtaining legal entity status, pesero will be charged a predetermined legal entity registration application fee.

In the Law of Limited Liability Companies, the Company obtains the status of a legal entity on the date of the issuance of the Decree of the Minister. In other words, a company is said to be incorporated if a ministerial decision has been issued. In the Copyright Act, the company obtains the status of a legal entity after being registered and receives proof of registration, the company can directly take legal action as a legal entity.

#### **B. Micro and Small Business Companies In Cooperation With Third Parties**

The establishment of an individual company was established by filling out a statement of establishment made in The Indonesian language. Individual Company is not an alliance but a statement of will because it is only established by one person.

The establishment of an Individual Company is sufficient to register and business license through the application for a business license in writing in Indonesian language, in contrast to a Limited Liability Company whose establishment must be by making a deed of establishment before a Notary Public.

When compared to existing companies in Indonesia, namely micro and small companies, it is very inversely proportional to the existing arrangements, because it is very easy in the establishment, licensing, and limited responsibilities. Micro and small companies have facilities and facilities owned by small micro businesses and also have limited liability.

Business criteria must be set in order to determine the difference in licensing costs, facilities, financing, guarantees, and other infrastructure facilities obtained. The importance of classifying in business criteria that aims to determine which business criteria.

If the individual company is no longer in accordance with the criteria of micro and small businesses, then the form must be changed in accordance with the Law of Limited Liability Companies.

In the Law of Limited Liability Companies there are 3 (three) organs of the company, namely, the Board of Directors, Board of Commissioners, and General Meeting of Shareholders. Each has different functions, rights and obligations. The General Meeting of Shareholders has the highest authority, which is not owned by the board of directors or the board of commissioners.

Individual Companies still have an absurd form because the board of directors and board of commissioners are concurrently by a single shareholder. If there is a conflict with other parties then this is very risky. Because of the limitation of liability to individual companies, the bias of all policies made based on the wishes of a single shareholder. The General Meeting of Shareholders of individual companies does not fulfill obligations in accordance with the principles of limited liability companies because there is no quorum and no consensus deliberation because the shareholders are single.

News of the General Meeting of Shareholders single or 1 (person) can not be made by deed relaas, because multiple legal actions must be more than 1 person to bring about the legal consequences, change and expiration of legal action.

Individual Companies do not require a Deed of Establishment made before a Notary Public, this minimizes the cost of establishing an Individual Company. If there is a change in the basic budget then it only uses the decision of the sole shareholder. Individual Companies are also obliged to report financial reports annually to the Legal and Human Rights Mnteri.

The Board of Directors as a representative of an individual company in or out of court has the potential to conduct a conflict of interest. Therefore, a board of directors must consciously carry out its responsibilities in good faith and do all it can to avoid conflicts of interest. Because it can undermine trust.

One of the weaknesses of a single board of directors is to use the company's wealth for personal benefit because it usually lacks understanding of the financial procedures commonly used by Limited Liability Companies in general so that it usually mixes the company's wealth and personal wealth is vulnerable. This is very risky if the Individual Company conducts cooperation activities with third parties. Because if there is a loss then it is very difficult to be held accountable (the reason to avoid liability) and this can be the reason for businesses that do have bad faith since the beginning of cooperation.

If directors and shareholders are different people, there is no possibility of conflicts of interest. It can happen by taking profits and bribes by selling positions as directors.

Based on the Copyright Act, the shareholders of individual companies have responsibility for their shares, but this does not apply if the Individual Company has not been incorporated or deliberately and knowingly conducts conflicts of interest and uses the Company's wealth to cause losses.

### **C. Authority of Establishment of Micro and Small Business Limited Liability Company Can Eliminate Notary Role**

The enactment of The Copyright Act and Government Regulation No. 8 of 2021 which gave birth to Individual Companies as a new etintas in the business world in Indonesia, has shown the seriousness of the Government of Indonesia to support Micro, Small and Medium Enterprises.

Establishment of Micro and Small Business Companies without involving the role of Notary Public and only make a statement of establishment. The Statement of Incorporation is meant by filling out the format online. Of course, the Letter is not categorized as a deed made by public officials or made by interested parties.

A Limited Liability Company has consequences of rights and obligations and separation of personal property with the Company's assets, especially in the process of establishment, it is required of Notary public, especially by the global community today engaged in business. In addition to fulfilling the provisions of legal certainty of the Law of Limited Liability Companies that require the establishment of deed made by Notary Public is also expected to provide legal protection.

Notary has the authority of the law to be able to testify in court on the deed he made, because the authentic deed as a supporter of the creation of the concept of legal certainty required by the parties including one of them is the Deed of Establishment of Limited Liability Companies. Likewise, everything related to the Company's documents made by Notary Public.

Limited Liability Company established by statement letter can not be used as a guarantee of the validity of a document and identity of the founder. The validity of the Limited Liability Company is doubtful because it can do illegal acts, and consequently the Limited Liability Company must be held accountable. So in ensuring legal certainty and legal protection, the deed of establishment of a Limited Liability Company made before a notary public is required to guarantee its validity even if it is only an Individual Company.

Legality is a self-identity that authorizes a business entity. Here Notary is very instrumental to ensure that everything sent online to the government is valid, to avoid abuse of authority. Because the establishment of an Individual Company there are no physical documents that must be given to the government, only in the form of scans of the documents only, and the party who signed the statement cannot be sure the document has been signed directly by the concerned party. Thus it will result in the absence of legal certainty. Indonesia sebagai negara hukum memberi kewenangan pada Notaris dalam pembuatan akta otentik adalah demi menjamin kepastian, ketertiban dan perlindungan hukum.

A person has rights and obligations in the guarantee of legal certainty in various economic and social relations including banking, land and other business relationships written evidence in the form of authentic deed is indispensable and continues to increase in line with the development of demands in addition to notarial deed will avoid disputes between interested parties. recognized by the community. A company must have legal legality in order for the company to be legally protected. This is the most important fact in an effort to.

## CONCLUSIONS

From the discussion above, several conclusions can be drawn:

1. With the Copyright Act, it is possible that micro and small businesses established by individuals can become legal entities with limited responsibilities that will facilitate micro and small businesses to gain access to run and develop their businesses.
2. If the Individual Company suffers losses, the shareholders are liable to the extent that the shares included in the individual company unless the shareholders do the things as stipulated in the Copyright Act, against these matters then the shareholders of the Individual Company may be burdened with unlimited liability up to the personal property of the shareholders.
3. Individual Company in the process of establishment, only by making a statement letter. The establishment is only by affidavit and this does not guarantee the validity of the document and the identity of the founder. Thus, in ensuring the validity of the Notary Public must still be included in its establishment. Because haya in the form of a scan of the document only then the statement can not be ascertained the document has been signed directly by the party concerned. Thus, the need for notarial deed in the establishment of Micro Small Business company will result in not guaranteeing legal certainty.

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