



Implication of Individual Company in the Scope of Business Law

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ABSTRACT

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The progress and improvement of national development in general and the development of economic activities in particular which has led to the development of the business world and companies, a company requires company legality which is an official source of information for all interested parties regarding the identity and matters concerning the business world and companies established, working and domiciled in the territory of the Republic of Indonesia. With the implementation of Individual PTs based on MSEs, it is a legal and economic development that goes hand in hand and the government in an effort to accelerate this economic growth by implementing the Job Creation Law which in fact follows the development of the digitalisation era. The research method used is the Normative Juridical approach method. The strategy carried out by the government to realise it all is to take a role in economic development by strengthening infrastructure in the form of laws and regulations and implementation. The Job Creation Law No. 11/2020, as many as 49 Implementing Regulations in 2021, is not only a form of competitiveness for foreign investment, but also strengthening for domestic investment including small, micro and medium economies by regulating the formation of individual legal entities.

KEYWORDS:

Job Creation, Enterprise, Economic Development, Small and Medium Enterprises

1. INTRODUCTION

Economic development must be able to provide solutions to various problems in a country through the application of science. If economic development previously used labour and capital, it is time to rely on the application of science and technology as the mainstay of value-added creation. Science and Technology (Science and Technology) continues to develop. Meanwhile, economic growth is the process of increasing the production capacity of an economy manifested in the form of an increase in national income. A country is said to experience economic growth if there is an increase in real *Gross National Product* (GNP) in the country. This economic growth is an indication of the success of economic development.

One of the indicators in economic development is by doing business. So to do business, it is necessary to have a business entity, either a legal entity or not a legal entity.

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In Indonesian legislation, only limited liability companies (PT) and cooperatives have been regulated in a law. Other forms of partnership companies such as *Maatschap*, Firma and CV are still based on the regulation of the Civil Code and the Commercial Code. In addition, there are also individual business forms that are commonly found in practice such as Usaha Dagang (UD) or Perusahaan Dagang (PD). The legality of a company or business entity is the most important element, because legality is an identity that legalises or validates a business entity so that it is recognised by the community. In other words, the legality of the company must be valid according to laws and regulations, where the company is protected or shaded with various documents until it is legal in the eyes of the law in the government in power at that time (Janes, 2012).

The sustainability of a business is influenced by various factors, one of which is the legality of the business. In a business, this legality factor is manifested in the ownership of a business licence. Examples of documents that support the legality of the company include: the deed of establishment of the company by a notary and announced in the state sheet, the company's taxpayer identification number, business licence, disturbance permit or HO

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(*Hinderordonnantie*), location permit, environmental permit, and many other permits according to their respective fields of business (Rini, 2017).

In carrying out business activities, in the order of business law in Indonesia, three types of business entities are known, namely private business entities, state-owned enterprises and cooperatives. What is said to be a business entity or company according to Article 1 of Law Number 3 of 1982 concerning Compulsory Company Registration is: "every form of business that carries out every type of business that is permanent and continuous and which is established, working and domiciled within the territory of the Republic of Indonesia, for the purpose of obtaining profit or profit." There are two main elements contained in a company, namely the form of business entity that runs every type of business in the form of either a partnership or a business entity established, working and domiciled in Indonesia and the type of business in the form of activities in the field of business that is carried out continuously for profit (Zaeni, 2005).

Legal development in Indonesia can be said to be very slow when compared to economic development. As a result, the economic development achieved by Indonesia does not have a strong legal foundation. Especially during the New Order era, legal development was often sidestepped in pursuit of rapid economic growth, resulting in various economic inequalities such as welfare gaps in society, collusion between businessmen and officials, high cost economy, corruption and so on. However, economic development must be carried out through a strong legal foundation (Harjono, 2021).

Ismael Saleh said that it is true that the economy is the backbone of people's welfare, and it is true that science is the pillar of the nation's progress, but it cannot be denied that the law is an institution that ultimately determines how the people's welfare can be enjoyed equally, how social justice can be realised in people's lives, and how the progress of science and technology can bring progress to many people (Sukardi, 2016).

Laws that follow economic activities and this is always influenced by the economic legal system adopted by a country. For Indonesia, the basis of economic law activities lies in Article 33 of the 1945 Constitution as well as several other regulations, so that business activities provide broader and mutually beneficial benefits as a goal of the government in directed economic development and of course must have supervision in terms of legality.

Business law is a manifestation of the economic system. Business activities and the risks that occur due to these business activities must be regulated in agreements and also laws and regulations that can provide a sense of comfort in doing business because of the rules in Business Law that provide a sense of justice, legal certainty and benefits (Agustinus, 2018).

In order to realise all of this, the government has

taken part in economic development by strengthening infrastructure in the form of laws and regulations and implementation. The Job Creation Law No. 11/2020, as many as 49 Implementing Regulations in 2021, is not only a form of competitiveness for foreign investment, but also strengthening for domestic investment including small, micro and medium economies by regulating the formation of individual legal entities. This strategy is carried out as an effort to increase Indonesia's investment competitiveness against other countries, which must be done significantly. The individual company that has just been rolled out by the Government of the Republic of Indonesia through a derivative of Law (UU) Number 11 of 2020 concerning Job Creation (Ciptaker), is actually not new to several countries in the world. The concept of an individual company falls into the category of not having a legal entity. The consequence is that there is no separation of personal and company wealth. So that the responsibility of the company owner also includes his personal wealth and his wife / husband if married.

Law No. 11 of 2020 on Job Creation changed the definition of PT to "Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorised capital which is entirely divided into shares or an individual Legal Entity that meets the criteria of Micro and Small Enterprises as stipulated in laws and regulations concerning Micro and Small Enterprises". The shareholder of an Individual PT cannot be a legal entity because the shareholder is owned by an individual.

The establishment of an Individual Company does not require a notarial deed, only one founder or only one shareholder, and there is no need for commissioners. All access to register an Individual Company electronically through the website of the Directorate General of AHU of the Ministry of Law and Human Rights of the Republic of Indonesia. And the Government regulates a new form of legal entity in the form of a *sole proprietorship with limited liability*. The establishment of entities for micro and small businesses is enough to fill out a *statement form electronically without requiring a Notary deed*.

The implementation of the MSE-based Individual Company is a legal and economic development that goes hand in hand and the government in an effort to accelerate this economic growth by implementing the Job Creation Law which in fact follows the development of the digitalisation era. Even so, a business that is established needs to have a clear and measurable direction, and guaranteed business legality is also very necessary for the availability of adequate data for the government to detect measurably the extent of business development that occurs in Indonesia. The problem is about the readiness of the government and business people in responding to the various challenges of economic globalisation in the business

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world that allows business competition to the occurrence of economic crises. The purpose of the discussion of this paper is to find out the implications of an individual company in the scope of business law.

2. RESEARCH METHODS

This research is a legal research with a Normative Juridical approach method. In the Normative Juridical research approach, *law is* conceptualised as what is written in legislation (*law in books*) or law is conceptualised as rules or norms that are benchmarks of human behaviour that are considered appropriate, thus in this study it does not use the term data but legal materials. All primary legal materials were obtained through literature study and analysed qualitatively.

3. DISCUSSION

3.1. The Effect of Business Law on the Economy in Indonesia

Economic Law and *Business Law* have similarities and differences, especially in relation to their scope. Economic Law and Business Law are legal rules and provisions related to the economic world (Agustinus, 2018). The range of business law is specific while economic law has a broader scope, but broadly speaking, both are one part. Business law consists of two different things, namely law and business, where each has its own definition.

The source of business law also comes from agreements made by parties who perform legal acts. Article 1338 of the Civil Code applies the principle of freedom of contract where the parties can determine the rules contained in the agreement they agree on and the agreement will legally apply as a "Law" that binds the parties. While the sources of business law according to Munir Fuady, include legislation, agreements, treaties, jurisprudence, custom, and doctrine of jurists.

Business development in Indonesia is currently experiencing very rapid progress, although experiencing progress, the business that is run cannot always run well, because in practice there is a possibility that the business being run suffers losses until it is declared bankrupt. Business activities and their risks must be regulated in agreements and also laws and regulations that can provide a sense of comfort in doing business because of the rules in Business Law that provide a sense of justice, legal certainty and benefits. Thus the existence of business law is made to regulate and protect businesses from various risks that may occur in the future. Below are some of the objectives of business law, namely:

1. Ensure the efficient and smooth functioning of market mechanism security.
2. Protecting various types of businesses, especially for Small and Medium Enterprises (SMEs).
3. Help improve the financial and banking system.
4. Provide protection to an economic actor or business actor.

5. Creating a safe and fair business for all business actors.

Business law is said to be a legal umbrella for all business activities, as the law is made to create a safe, orderly, and peaceful life, just like business law. Below are some of the functions of business law (libera.id):

1. Become a source of useful information for business people.
2. Business actors can be more aware of their rights and obligations when building a ~~bus~~ so that their business does not deviate from the existing rules and has been written in the Law.
3. Business actors better understand their rights and obligations in a business activity
4. The realisation of business attitudes and behaviour or business activities that are fair, honest, reasonable, healthy, dynamic, and just because they have legal certainty.

Soetandyo Wignyoebroto (in Dhaniswara, 2021) states that a country that is forced to accept legal transplants is like a vicious circle because it will be trapped in serious difficulties to break away from colonial influence, considering that the new law has not been prepared, while the existing law is not in accordance with the soul of the nation, because its spirit is oppressive and exploitative. Another dynamic of globalisation is the change in the patterns of human relations in the organisation of life, especially in the fields of law and economics (business), which were originally local in scope (which is concrete) towards the scope of national, regional and even global (which is increasingly abstract) (Soetandyo, 2002).

In the dynamics of the growing Indonesian economy, various government efforts to deregulate in the economic sector are continuously carried out which are expected that deregulation policies can have an impact on the development of business law, such as the implementation of the Job Creation Law No. 11/2020, with 49 Implementing Regulations, as a form of competitiveness for foreign investment, strengthening domestic investment including small, micro and medium economies by regulating the formation of individual legal entities.

3.2. Implication of Individual Company in the Scope of Business Law

A business entity is a container or entity used to conduct business commercially with the aim of attracting profits. According to the Big Indonesian Dictionary, a Business Entity is a group of people and money capital that has activities engaged in trade or the business world / company (Soetandyo, 2002). Business entities can be divided into 2 (two), namely business entities that are not legal entities and business entities that are legal entities. The rules regarding Business Entities in Indonesia are sourced in several different regulations, including the Civil Code (KUHP/BW), the Commercial Code (KUHD/WvK), Law Number 40 of 2007 concerning Limited Liability

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Companies, Law Number 25 of 1992 concerning Cooperatives, and Law Number 16 of 2001 which was amended by Law Number 25 of 2004 concerning Foundations.

To discuss corporate law, it is necessary to first know what is meant by a company. Purwosutjipto (1983) states that a company is a whole of actions carried out continuously, acting out, to get income, by trading goods delivering goods or entering into trade agreements. According to the Law on Trade, a business actor is "every individual Indonesian citizen or business entity in the form of a legal entity or not a legal entity established and domiciled in the jurisdiction of the Unitary State of the Republic of Indonesia that conducts business in the field of trade."

The establishment of a company incorporated for the purpose of running a business in addition to aiming to provide legality, but the company owner also wants to take advantage / profit in his business. As in the Purposeful Property Theory, from Brinz. In this theory it is said that only humans can be legal subjects, therefore legal entities are not legal subjects and the rights granted to a legal entity are essentially rights with no legal subject. As for the *Propriete Collective* Theory, by Planiol and Molengraff, that according to this theory the rights and obligations of legal entities are essentially the rights and obligations of the members together. The wealth of a legal entity is the joint ownership of all its members. The people who gather are a unity and form a person called a legal entity. Therefore, a legal entity is a juridical construction only (Ali, 2001).

The enactment of the Job Creation Law No. 11 of 2020 (Job Creation Law) certainly supports the ease of business actors in building their businesses. One form of implementation is the existence of an individual company, which is one of the new types of legal entities in the Job Creation Law. Individual PTs can only be established for micro and small business criteria in accordance with PP No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises. The definition of an Individual PT is an individual legal entity that fulfils the criteria of Micro and Small Enterprises as stipulated in the laws and regulations regarding Micro and Small Enterprises".

This new type of legal entity is expected to provide convenience as well as encourage MSEs to develop their businesses without worrying about financing issues or other facilities that previously could only be obtained if the business was in the form of a legal entity (Limited Liability Company). According to PP No. 7 of 2021, the criteria for micro and small businesses are grouped based on business capital or annual sales results. The criteria for business capital and sales results referred to consist of:

1. Micro enterprises have a business capital of up to a maximum of IDR 1 billion excluding land and building of the business premises and annual sales

revenue of up to a maximum of IDR 2 billion.

2. Small enterprises have a business capital of more than Rp 1 Billion up to a maximum of Rp 5 Billion excluding land and building of the place of business and annual sales revenue of more than Rp 2 Billion up to a maximum of Rp 5 Billion.

Even though the founder is only one person, it needs to be emphasised that an Individual PT is still a legal entity just like the PT that we have known so far with a minimum of two founders and shareholders (hereinafter referred to as a regular PT). The status of an Individual PT as a legal entity is confirmed in Article 1 of Government Regulation No.8 of 2021 which states that a Limited Liability Company, hereinafter referred to as a Company, is a legal entity that is a capital alliance, established based on an agreement, conducting business activities with authorised capital which is entirely divided into shares or an individual legal entity that meets the criteria of micro and small businesses. This Individual Company does not require a notarial deed and is also free to determine the amount of capital. Not only that, the individual company is also exempted from the obligation to announce the establishment of a legal entity in the Supplement to the State Gazette. The process of registering an Individual Company through the Directorate General of AHU application is as follows:

1. Established by one person (including Shareholders and Directors, no Commissioners)
2. Have micro and small business activities
3. The founder makes a declaration of establishment
4. Electronic registration of Individual Companies through the Minister of Law and Human Rights of the Republic of Indonesia
5. Arranging NPWP for Individual Company
6. Apply for NIB and Business Licence for Individual Company

After that, the individual company will obtain legal entity status after registering the statement of establishment and obtaining an electronic registration certificate from the Directorate General of AHU. After being a legal entity, an individual company has the obligation to make financial statements no later than six months in the current financial year calculated since the company obtained legal entity status.

Article 153A of the Job Creation Law states that "A company that fulfils the criteria of Micro and Small Enterprises can be established by 1 (one) person, established based on a statement of establishment." And the mechanism for establishing an Individual PT is regulated in Article 153B which states, "The statement of establishment is registered electronically with the Minister by filling in the form."

And the Government regulates a new form of legal entity in the form of a *sole proprietorship with limited liability*. The establishment of the entity for micro and small businesses is enough to fill out a *statement form*

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electronically without requiring a Notary deed. This provision is regulated in Government Regulation (PP) Number 8 of 2021 concerning the Company's Authorised Capital and Registration of Establishments, Changes, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises which is a derivative regulation of Law Number 11 of 2020 concerning Job Creation (kabarnotariat.id, 2021).

Minister of Law and Human Rights (Menkumham), Yasonna H. Laoly argues that "Individual Companies are present to facilitate business actors in developing their business by providing *confidence* for business actors to apply for capital loans as well as making it easier for banks to monitor *business sustainability* through financial reports." Business law is the embodiment of the economic system. If all economic activities are dominated and controlled by the state, the business law will tend only to protect the interests of the ruler. Conversely, if all economic activities are dominated or controlled by the state, business law will tend to be orientated only to protect or maintain the interests of capital and business entrepreneurs (Agustinus, 2018). The government's hope in deregulating business practices by implementing this Individual Company is expected to support the formation of EODB (*Ease of Doing Business*) in Indonesia, which makes it easier for business actors to have businesses with legal and legal entities with easy access to capital to develop their businesses. So that it will have a positive impact that helps improve the national economy if there are many business people who are enthusiastic about creating an Individual Company.

CONCLUSIONS AND SUGGESTIONS

In carrying out business activities, the Company as a vehicle for economic development is regulated in the Civil Code, Commercial Code and laws and regulations. The strategy carried out by the government to realise it all is to take a role in economic development by strengthening infrastructure in the form of laws and regulations and implementation. The Job Creation Law No. 11/2020, as many as 49 Implementing Regulations in 2021, is not only a form of competitiveness for foreign investment, but also strengthening for domestic investment including small, micro and medium economies by regulating the formation of individual legal entities.

Individual Company is an individual legal entity that fulfils the criteria of Micro and Small Enterprises as stipulated in the laws and regulations concerning Micro and Small Enterprises". This new type of legal entity is expected to provide convenience as well as encourage MSEs to develop their businesses without worrying about financing issues or other facilities that previously could only be obtained if the business was in the form of a legal entity (Limited Liability Company). The implementation of access to electronic registration of Individual Companies through

the website of the Directorate General of AHU of the Ministry of Law and Human Rights of the Republic of Indonesia is a legal and economic development that goes hand in hand and the government in an effort to accelerate economic growth by following current technological developments.

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