



## LEGAL IMPLICATIONS OF THE JOB CREATION LAW ON THE POSITION OF DIRECTORS IN INDIVIDUAL COMPANIES

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### *Abstract*

*The enactment of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Job Creation Law) has brought fundamental changes to the concept of the Limited Liability Company (PT) legal entity in Indonesia. Significant changes occurred in Article 1 number 1 and Article 7 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT), which now introduces the concept of a Sole Proprietorship (Private Liability Company) for Micro and Small Enterprises (MSEs). Unlike the classic principle of a PT, which is a capital association and must be established by at least two individuals based on an agreement, a Sole Proprietorship allows for the establishment of a single individual through a deed of establishment. However, the Job Creation Law does not change the provisions regarding the Company's Organs, which consist of the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners, which are generally assumed to be held by different individuals. This study aims to examine and analyze the status and mechanisms of Limited Liability Company Organs in Sole Proprietorships categorized as micro and small enterprises, considering the combination of the functions of capital owner and manager within a single legal entity.*

**Keywords:** Sole Proprietorship, Job Creation Law, Micro and Small Enterprises

### **Abstrak**

Lahirnya Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang (UU Cipta Kerja) telah membawa perubahan fundamental terhadap konsep badan hukum Perseroan Terbatas (PT) di Indonesia. Perubahan signifikan terjadi pada Pasal 1 angka 1 dan Pasal 7 Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (UUPT), yang kini memperkenalkan konsep Perseroan Perorangan untuk kriteria Usaha Mikro dan Kecil (UMK). Berbeda dengan prinsip klasik PT yang merupakan persekutuan modal dan wajib didirikan oleh minimal dua orang berdasarkan perjanjian, Perseroan Perorangan memungkinkan pendirian oleh satu orang melalui surat pernyataan pendirian. Namun, UU Cipta Kerja tidak mengubah ketentuan mengenai Organ Perseroan yang terdiri dari Rapat Umum Pemegang Saham (RUPS), Direksi, dan Dewan Komisaris, yang secara umum diasumsikan dijabat oleh orang yang berbeda. Penelitian ini bertujuan untuk mengkaji dan menganalisis kedudukan serta mekanisme Organ Perseroan Terbatas pada Perseroan Perorangan dengan kriteria usaha mikro dan kecil, mengingat adanya penggabungan fungsi pemilik modal sekaligus pengelola dalam satu subjek hukum tunggal.

**Kata Kunci:** Perseroan Perorangan, UU Cipta Kerja, Usaha Mikro dan Kecil



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## **I. INTRODUCTION**

In an effort to boost the national economy, the Indonesian government has issued a new regulation, the Job Creation Law, or Law Number 2 of 2022 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, which becomes a Law, better known as the Omnibus Law.

This regulation significantly amends several existing Indonesian regulations, including Law Number 40 of 2007 concerning Limited Liability Companies. Chapter VI, Part Five, concerning Limited Liability Companies, specifically Article 109, amends several provisions of the Limited Liability Company Law. The most fundamental aspect of this amendment to the Limited Liability Company Law is the renewal of the concept of a limited liability company (PT), originally regulated in the Limited Liability Company Law, to the provisions of the Limited Liability Company Law. In Chapter VI, Part Five of the Job Creation Law, Article 1, Number 1 of the Limited Liability Company Law defines a limited liability company as follows:

"A Limited Liability Company, hereinafter referred to as a perseroal, is a legal entity constituting a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares, or an individual legal entity that meets the criteria for micro and macro businesses as stipulated in the Laws and Regulations concerning Micro and Macro Businesses."

A closer examination of Article 1, Number 1, concerning the definition of a PT reveals a new concept within a PT, namely an individual legal entity that meets the criteria for micro and macro businesses. This concept of an individual legal entity is in stark contrast to the principles of a PT. In the previous PT Law, the founders were established based on an agreement and constituted a capital partnership. This is in accordance with Article 7, paragraph (1) of the PT Law, which states that "A company is established by two or more persons through a notarial deed drawn up in Indonesian." This means that because "a PT is identical to the principle of being established based on an agreement and constitutes a capital partnership, a PT must have at least two founders." Although Article 7, paragraph (7) provides an exception for the establishment of a PT by two (2) individuals, this only applies to state-owned enterprises (BUMN), stock exchange companies, clearing and guarantee institutions, and others. This means that under the Limited Liability Company Law, the

exception for the establishment of a PT by at least two (2) individuals is only possible for state-owned companies and companies conducting business in the capital market sector, and this exception does not apply to private companies established by the general public.

Article 109 (2) of the Job Creation Law also amends the provisions of Article 7 of the Limited Liability Company Law, which stipulates that the establishment of a PT must be by two (2) individuals. However, there is a change in the principle of Article 7, paragraph (7) regarding the exception for the establishment of a PT by two (2) individuals. This change to the provisions of Article 7, paragraph (7) of the Limited Liability Company Law, which initially did not provide an exception for privately owned PTs to be established by at least two (2) individuals, the Job Creation Law instead provides an exception for privately owned PTs that meet the criteria for micro and macro businesses to be established by one (1) individual. The Job Creation Law, in addition to amending several articles, also inserts a new article into the Limited Liability Company Law. Article 109 (5) inserts 10 articles between Articles 153 and 154 of the Limited Liability Company Law, specifically regulating sole proprietorships for micro and macro businesses. Article 153A stipulates that "a company that meets the criteria for a micro or macro business may be established by one person based on a statement of establishment written in Indonesian."

Based on the provisions of the above article, it is clear that the Job Creation Law facilitates business operations for the public, particularly micro and macro business actors, by establishing a limited liability company (PT) that can be established by one person. The ability to establish a PT by one person, as referred to as a sole proprietorship, is certainly very interesting to examine from the perspective of Limited Liability Company Organs. The provisions of Article 1 number (2) of the UUPT and the Job Creation Law do not change the provisions regarding the Company's Organs" which consist of "General Meeting of Shareholders, Board of Directors and Board of Commissioners" which in general must be held by more than 1 (one) person. Based on the explanation above, this research study is to determine the position of Limited Liability Company Organs in Sole Proprietorships with Micro and Macro Business criteria. From the background above, the researcher formulates the problem related to How is the Position of Directors in Sole Proprietorships According to the Job Creation Law?

## **II. RESEARCH METHODS**

This research uses a normative legal research method with two main approaches: a conceptual approach and a statutory approach. This combination is applied to produce a prescriptive analysis, namely providing constructive legal recommendations.

## **III. RESEARCH RESULTS**

### **General Overview of the Definition of the Board of Directors**

The board of directors is the organ of a limited liability company that manages the company. This means that the company's operational activities, including the consequences, whether they result in profits or losses, will largely depend on and be determined by the performance of the board of directors. Therefore, there are demands and expectations placed on the board of directors to carry out their duties professionally, with good faith and responsibility.

Regarding the important and strategic role of the board of directors as managers of a limited liability company, Law Number 40 of 2007 concerning Limited Liability Companies (the 2007 Company Law) expressly stipulates that the board of directors must be accountable for the management they perform. Regarding this responsibility, each member of the board of directors is personally liable for the company's losses if they are at fault or negligent in carrying out their duties in accordance with applicable regulations. If the board of directors consists of two or more members, the liability for the company's losses becomes a burden that must be borne jointly and severally by each member of the board of directors.

However, the 2007 Company Law also stipulates that members of the board of directors may be exempted from liability for losses incurred by the company. This exemption or exclusion from liability can be obtained if the directors can prove four things: the loss occurred not due to their fault or negligence; they have conducted management in good faith and with due care; they have no conflict of interest in the management actions that resulted in the loss; and they have taken action to prevent the occurrence or continuation of the loss. If directors are exempted from liability for company losses due to proof of these four things, this condition can be considered a form of legal protection for the directors in managing the company.

### **Understanding Legal Responsibility (Liability)**

The issue of responsibility essentially concerns an individual's obligation to carry out the activities assigned to them to the best of their ability. In managing a company,

responsibility refers to the directors' obligation to manage the company in accordance with their assigned duties, both in accordance with statutory provisions and the company's articles of association. The issue of responsibility itself is inseparable from the issues of awareness and freedom. Responsibility here stems from human awareness and freedom, which then gives rise to responsibility. In existentialism, humans are understood to exist with awareness as themselves. Human awareness is always accompanied by freedom, for without freedom, human awareness, and even existence, would be absurd.

In this case, humans in shaping themselves have the opportunity to choose each time what is good and what is not good for themselves. Therefore, every choice made, attached there responsibility as a consequence. Thus, it can be said that awareness and responsibility are related to human attitudes and actions in filling the space of freedom that is owned. The attitudes and actions taken by each human being do not stand in a vacuum, but must be accounted for against the true values, towards their duties and obligations. In relation to the responsibility of directors in managing the company, it is necessary to examine not only the responsibility, but also the conditions that bring about that responsibility, in this case "awareness" and "freedom" in managing the company. All three, namely "awareness", "freedom", and "responsibility", in this case need to be seen as a related network. Because the context is company management, then "awareness", "freedom" and "responsibility" are linked to the duties and obligations in managing the company. Of the many definitions and understandings of consciousness, one refers to it as an internal human condition that must be distinguished from one's physical condition. It is the link between the stimulus a person receives and the response they make. Therefore, consciousness, as an internal condition, influences human actions. Meanwhile, freedom, in a positive sense, also known as moral freedom, refers to the human ability to choose between alternative courses of action. In a negative sense, moral freedom refers to the absence of coercion or threats in initiating action. Therefore, (moral) freedom refers to the human ability to freely choose between alternative courses of action without any threat or coercion.

In relation to corporate management, this brief explanation of consciousness and freedom conveys that corporate management by directors must be accompanied by an awareness of their duties and obligations as directors in managing the company. Such awareness is crucial to ensure that their actions align with their duties and obligations. Furthermore, freedom implies that the directors' actions in managing the company, which is

part of economic activity, would be impossible without the freedom to choose between alternative courses of action. However, this freedom must also be in line with the guidelines for managing a company, which are generally set out in the company's articles of association, as well as in statutory regulations. Therefore, it is necessary to further elaborate on the duties, obligations, and guidelines for managing a company.

### **Regulations for Sole Proprietorships in the Job Creation Law**

The Job Creation Law amends the provisions of Law Number 40 of 2007 concerning Limited Liability Companies by adding provisions regarding Sole Proprietorships. Sole Proprietorships are intended for micro and small businesses and are established by a single person through a statement of establishment.

The main characteristics of Sole Proprietorships are:

1. Founded by a single person;
2. Has legal entity status;
3. Simplified corporate structure;
4. Founders serve as both shareholders and directors.

This structural simplification has a direct impact on the position and role of the board of directors within the company.

### **Position of the Board of Directors in Sole Proprietorships**

#### **1. The Board of Directors as the Sole Management Organ**

In Sole Proprietorships, the board of directors is the sole organ responsible for managing the company. There is no requirement to establish a board of commissioners, thus there is no internal oversight mechanism as in conventional Limited Liability Companies. The position of the board of directors in Sole Proprietorships is crucial because:

1. The board of directors directly manages the company;
2. The Board of Directors represents the company in legal relations;
3. The Board of Directors determines business policies and strategies.

#### **2. Founders' Dual Position as Directors**

The Job Creation Law allows founders of Sole Proprietorships to serve concurrently as directors. Legally, this creates a dual role, namely as shareholders and as managers of the company. This dual role is legally valid, but has the potential to create conflicts of interest, especially if the founders fail to separate their personal interests from the interests of the company. The Board of Directors in Sole Proprietorships has broad authority, including:

1. Carrying out the company's business activities;
2. Managing the company's assets;
3. Making agreements on behalf of the company;
4. Representing the company in and out of court.

This authority must be exercised in accordance with the company's intent and objectives and must not exceed the limits of authority determined by statutory regulations.

### **Directors' Liability in a Sole Proprietorship**

#### **Civil Liability**

Directors are civilly liable for company losses if they are proven negligent or have acted in bad faith. In a Sole Proprietorship, this liability is even more significant due to the absence of an internal oversight mechanism.

If directors abuse their position, they may be held personally liable, even if the company has legal entity status.

#### **Piercing the Corporate Veil Principle**

In cases of abuse of legal entity, such as mixing personal assets with company assets, the law allows for the application of the doctrine of piercing the corporate veil. This doctrine allows for the penetration of limited liability and direct personal liability on directors.

#### **Critical Analysis of the Regulations on the Position of Directors**

The regulation on the position of directors in Sole Proprietorships under the Job Creation Law has advantages and disadvantages. On the one hand, this regulation provides convenience and flexibility for micro and small businesses. However, on the other hand, the lack of oversight has the potential to lead to abuse of authority by directors. Therefore, strengthening legal awareness and external oversight is crucial to ensure that directors carry out their duties in accordance with the principles of prudence and good faith.

#### **Definition of an Individual Limited Liability Company**

Based on Article 109, number 1 of the Job Creation Law, which amends Article 1, number 1 of the Limited Liability Company Law, a PT is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares, or an individual legal entity that meets the criteria for micro and small enterprises (MSEs) as stipulated in the laws and regulations concerning MSEs.

Furthermore, based on Article 2, paragraph (1) of the Minister of Law and Human Rights Regulation Number 21 of 2021 concerning the Requirements and Procedures for Registering the Establishment,

Changes, and Dissolution of Limited Liability Company Legal Entities (Permenkumham 21/2021), the current types of PTs are:

- a. Capital Partnership Limited Liability Company; and
- b. Individual Limited Liability Company

A Capital Partnership Limited Liability Company is a legal entity that is a capital partnership established based on an agreement and conducting business activities with authorized capital entirely divided into shares. Meanwhile, PT Perorangan is a legal entity that meets the criteria of MSEs as stipulated in the laws and regulations regarding MSEs. In practice, PT Persekutuan modal is often referred to as PT Biasa and PT Perorangan is also called PT UMK, the establishment of a Sole Proprietorship or PT Perorangan can be carried out by 1 (one) person only as a shareholder and as an owner by fulfilling the criteria of Micro and Small Enterprises. In accordance with the provisions of PP No. 7 of 2021 concerning Ease of Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises that: Micro business criteria are determined based on a maximum business capital of IDR 1 billion excluding land and buildings for business premises or a maximum annual sales result of IDR 2 billion. Meanwhile, small businesses are determined based on business capital ownership of more than IDR 1 billion - IDR 5 billion, excluding land and buildings for business premises or having annual sales results of more than IDR 2 billion - IDR 15 billion.

From these provisions it can be said that PT Perorangan is a Legal Entity established by one person who is also the owner and manager with a maximum business capital of IDR 5 billion excluding land and buildings for business premises or has laws and regulations regarding MSMEs. In practice, PT Persekutuan modal is often referred to as PT Biasa and PT Perorangan is also called PT UMK, Establishment of a Sole Proprietorship or PT Perorangan can be carried out by 1 (one) person only as a shareholder and as an owner by fulfilling the criteria of Micro and Small Enterprises. In accordance with the provisions of PP No. 7 of 2021 concerning Ease of Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises that: Micro business criteria are determined based on a maximum business capital of IDR 1 billion excluding land and buildings for business premises or a

maximum annual sales result of IDR 2 billion. Meanwhile, small businesses are determined based on business capital ownership of more than IDR 1 billion - IDR 5 billion, excluding land and buildings for business premises or having annual sales results of more than IDR 2 billion - IDR. 15 billion. Based on these provisions, it can be concluded that a PT Perorangan is a legal entity established by one person who is both owner and manager, with a maximum business capital of IDR 5 billion, excluding land and buildings for the business premises, or with annual sales of more than IDR 2 billion – IDR 15 billion. Based on these provisions, it can be concluded that a PT Perorangan is a legal entity established by one person who is also owner and manager of IDR 5 billion.

### **Responsibility of Directors for Company Management**

Following the enactment of the Job Creation Law, directors in a Sole Proprietary Limited Liability Company remain bound by the principle of fiduciary duty, namely the obligation to manage the company in good faith, with full responsibility, and with prudence. Any actions by directors that result in losses for the company may give rise to civil liability.

The legal implication is that directors cannot hide behind the simplicity of the Sole Proprietary Limited Liability Company structure to avoid liability. If directors are negligent or act beyond their authority, they can be held civilly liable for the losses incurred.

### **IV. CONCLUSION**

Based on the research and discussion, the following conclusions can be drawn:

First, the Job Creation Law has brought fundamental changes to corporate law in Indonesia with the introduction of the Sole Proprietorship (PT), which can be established by a single person and is intended for micro and small businesses. The introduction of the Sole Proprietorship (PT) represents a legal reform oriented towards ease of doing business and empowering MSEs, without eliminating the character of the PT as a separate legal entity.

Therefore, even though it is established by a single person, the PT retains its status as an independent legal entity, separate from its founder.

Second, the position of the board of directors in a Sole Proprietorship (PT) has become very central and strategic. The board of directors not only serves as the company's management body but also generally serves as both founder and shareholder. The simplification of the company's organizational structure, which eliminates the requirement for a board of commissioners, has resulted in the centralization of management and supervisory functions in the hands of a single person. Legally, this is legal under the Job

Creation Law, but conceptually, it creates the potential for conflicts of interest and blurs the distinction between personal and corporate interests.

Based on the research conclusions, the author provides several suggestions as follows: First, to the legislators, it is recommended that the regulations regarding Individual Limited Liability Companies be refined, particularly those related to the position and oversight mechanisms of the board of directors. Considering that the concentration of management authority rests with one person, stricter regulations are needed regarding the limits of the board of directors' authority and control mechanisms, both through periodic reporting obligations, strengthening administrative oversight by the relevant ministries, and clearer sanctions regulations in the event of misuse of the legal entity.

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