

Problematics of Individual Company as Legal Entity in Terms of Indonesian Omnibus Law on Job Creation Law

Andistyia Pratama^{1,*}, Dwi Ratna Indri Hapsari², Rahmi Fuji Astuti Harahap³

¹ Faculty of Law Universitas Indonesia, Jakarta, Indonesia

² Faculty of Law, Universitas Muhammadiyah Malang, Malang, Indonesia

³ Graduate School of Public Policy, University of Tokyo, Tokyo, Japan

* Corresponding E-mail: andistyia.fanswork@gmail.com

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Abstract

The introduction of Individual Companies, which can be established by a single individual, aims to streamline company management and legal recognition while enhancing Indonesia's investment climate. This study seeks to address two critical questions: How is the concept of an individual legal entity regulated under the Job Creation Law? And what is the legal position of the General Meeting of Shareholders (GMS) in a sole proprietorship that constitutes an individual legal entity? Employing a normative or doctrinal legal research approach with a regulatory focus, this study revealed that the concept of an Individual Company aligned with institutional theory. Both agreement and institutional theories were applied in managing such companies. The study further highlighted that GMS decisions in an Individual Company were executed as shareholder resolutions, which carried the same legal weight as GMS decisions in traditional companies, while the role of commissioners was effectively eliminated.

Keywords: Individual company; Legal entity; Omnibus law; Job creation

1. Introduction

The Indonesian legal system utilizes the omnibus approach, a new theory, in the Job Creation Law. The omnibus approach is considered a solution to various problems of legal overlap and ambiguity that have hampered investment[1]. The Indonesian Job Creation Law uses an omnibus approach to enhance the investment climate in Indonesia. Investment regulations encompass many intricate facets, including infrastructure, employment, non-fiscal incentives, and infrastructure [2]. Before the Job Creation Law came into effect, sole proprietorships in Indonesia were generally not recognized as legal entities. Individual entrepreneurs operated their businesses as sole proprietorships or as Micro, Small, and Medium Enterprises (MSMEs) regulated under Law No. 20 of 2008 on MSMEs. However, these entities did not enjoy legal protections, such as the separation of personal and business assets, provided to legal entities [3]. MSMEs play a crucial role in Indonesia's economy by contributing significantly to employment, GDP, and exports, particularly in sectors like garments, food, and electronics [4][5]. Despite their economic importance, many MSMEs lack formal business legality, which hinders their growth potential and access to financial resources.

To gain legal entity status, an individual company had to establish a legal entity such as a Limited Liability Company (PT), which required at least two shareholders as stipulated in Law No. 40 of 2007 on Limited Liability Companies (Company Law). This posed challenges for individuals wishing to operate independently while still obtaining

legal recognition. As they were not recognized as legal entities, sole proprietorships did not have a clear separation of personal and business assets, increasing the risk of personal liability for entrepreneurs in the event of legal claims.

Before the enactment of the Job Creation Law in Indonesia, sole proprietorships lacked legal recognition, resulting in unlimited liability for individual entrepreneurs. The introduction of Law No. 11 of 2020 has transformed this landscape by allowing the establishment of a new legal entity, the Limited Liability Company (LLC) for Micro and Small Enterprises (MSEs), which provides essential legal protections and facilitates business operations. The Job Creation Law enables sole proprietors to register as LLCs, offering limited liability and separating personal and business assets [6]. This legal recognition enhances access to funding and formalizes business operations, which is crucial for economic growth [7].

According to Article 3 letter c, the purpose of the Job Creation Law is “to adjust various regulatory elements related to the supporting, strengthening and protecting cooperatives and Micro, Small, and Medium Enterprises (MSMEs), as well as national industry” [8]. This rule aims to govern several convenience areas for MSMEs when doing economic activities in Indonesia. The facilitation of business operations for MSMEs encompasses streamlined processes for obtaining business licenses and establishing company entities. This pertains to the legal authorization granted to MSMEs to engage in commercial operations [9].

The Job Creation Law makes several changes to the process of forming limited liability firms. Law No. 20 of 2008 on Micro, Small, and Medium Enterprises (hereafter referred to as the UMK Law) is amended to incorporate a provision respecting "Individual Legal Entities" that meet the criteria for UMK (henceforth referred to as the Limited Liability Company Law) [1].

The establishment of Individual Companies under the Job Creation Law marks a significant shift in Indonesia's corporate legal framework by introducing a simplified mechanism for single-person business entities with legal status. This innovation aims not only to improve the investment climate but also to ensure greater transparency and public supervision over the company's legal status and administration. However, the integration of Individual Companies within the broader context of Limited Liability Companies raises critical questions regarding the conceptual and practical implications of this new legal entity. Specifically, this study examines: (1) How is the concept of an individual legal entity regulated under the Job Creation Law? (2) what is the legal position of the General Meeting of Shareholders (GMS) in a sole proprietorship that constitutes an individual legal entity? These questions highlight the novelty of this research, which seeks to address regulatory and theoretical gaps in understanding the implications of Individual Companies for Indonesia's legal and investment landscape.

2. Research Methods

This study used normative or doctrinal legal research with a statute approach [10]. The rules and regulations include the work copyright legislation, the limited liability company law, and the law on MSMEs, which legally regulates each business. In addition to the statutory approach, this research also used a conceptual approach [11] by basing

the analysis on the Concept of Legal Entity, Organ Theory, and Common Wealth Theory. The analysis technique applied prescriptive analysis [12] by analyzing legal materials, norms, concepts, and theories.

3. Results and Discussion

3.1. Concept of Individual Legal Entity in a Company

Legal subjects cannot be logically isolated from the legal process. Legal subjects consist of anything that can hold or be bound by legal rights and obligations, including natural persons (*natuurlijkepersoon*) and legal entities (*rechtspersoon*) [13]. Any individual who holds or is obligated to hold rights and responsibilities within legal relationships is considered a legal subject. From these two definitions, it is possible to deduce that legal subjects are, in essence, parties entrusted with rights and responsibilities that empower them to engage in legal proceedings. Two categories comprise legal subjects: natural persons and legal entities [14].

The term "person" is substituted for "human" in specific terminology. However, the authors consider the legal usage of the term "person" to be inappropriate due to its numerous etymological meanings [15]. Therefore, proper use of the term "person" is required when discussing individuals, whether it is a natural person (or legal entity) or a human being) [2]. Kelsen stated that [16] "*both natural persons and juridical persons are subject to rights and obligations*" [17], emphasizing the importance of distinguishing between these two categories.

As a result, it is possible to conclude that, consciously or unconsciously, individuals and legal entities, both recognized as legal subjects, have rights and obligations[18]. M. Waqas and Z. Rehman stated that in legal contexts, the term "person" will always indicate [19] "*either legal person (corporation) or natural person as long as the interpretation fits with the general design and intent of the act.*" Additionally, Francisco Ferrara argues that the term "person" has 3 meanings: "(a) *biological, referring to a rational being; (b) philosophical, referring to a rational being capable of proposing and carrying out objectives; and (c) legal, which treats the person as a subject of law with rights and obligations*"[20].

Ferrara's fundamental perspective on the concept of "person" can be understood from three perspectives: biological, philosophical, and legal. Biologically, Ferrara defines "people" as intelligent individuals [21]. In terms of philosophy, a "person" is a creature who can act and do the things required to achieve goals [22]. Building on Ferrara's view of the concept of a "person" under the law, Bonnescase establishes three criteria for deciding whether a person can be classified as a legal subject [23]:

1. *The components that set a person apart and establish their legal status are their existence and individuation. Name, physical characteristics, and residence location are distinguishing factors.*
2. *Understanding the legal capacities of individuals (natural persons). This is premised, in part, on natural persons' legal capacity as defined by the organization's bylaws. In contrast, it includes the study of entities created to compensate for the shortcomings of real humans.*
3. *The ability, individuation, and existence of the juridical individuals or legal entities.*

At least to qualify as a legal subject, humans have an existence acknowledged since birth[24]. Thus, their existence has been acknowledged, as have their talents, and once they reach adulthood, they will be regarded as legally capable. In the third point, the previous statement mentions the presence of legal entities as legal subjects [25]. This includes recognizing the existence of a legal entity and what it can do as a legal subject [26].

According to C. S. T. Kansil's book [17], "These bodies or associations are called Legal Entities (*rechtspersoon*), which means people (persons) created by law." Legal entities are referred to as *persona ficta*, or people created by law as *personas* [27]. The authors agree with C. S. T. Kansil's definition of a legal entity as a subject or person constituted by the law. Simply said, because the law creates legal entities, their status disappears [17].

The authors discover two major types of legal traffic: individuals and legal entities. Furthermore, legal entities can be classified into numerous types based on the reasons for their founders[28]. While each legal entity possesses unique characteristics, they all have the elements that define them as legal entities. Scholten defined a legal entity as having four essential requirements: having its assets resulting from a legal act of separation, having its own defined aims, and having equipment or organization [29]. Similarly, Chidir Ali stated that every legal organization with legal authority must meet these four characteristics [14].

That being so, if we examine the various forms of Indonesian legal entities, such as limited liability corporations, foundations, and cooperatives, it is evident that they all share the features listed above. The authors agree that establishing a legal corporation, regardless of its form, requires the division of assets, a clear structure of business activities, and well-defined objectives outlined in the deed of establishment [30]. These elements are essential for the legal entity to be recognized and achieve the intended consequences. Aside from that, it is necessary to ensure that legal entities may utilize their rights and obligations as persons, allowing them to carry out legal acts.

According to M. Waqas and Z. Rehman, a company is regarded as a legal entity because it has the rights and obligations outlined by the law [31], "*Corporation is a legal entity means that corporation in the eye of law is considered as a legal person having certain rights and duties under the law.*" Companies designated as legal entities under Indonesian law are limited liability companies (LLCs) [32]. An LLC, commonly known as a "Limited Liability Company (Company Ltd.)" in English, is classified as "limited" since its shares are divided among each shareholder. As a result, an LLC's responsibility is limited to the number of shares owned by its shareholders.

Jason Fernando defines an LLC as a legal entity apart from its owner [17]. Its primary goal is to protect its owners from damage and reduce their legal liability. The preceding definition is based on United States law regarding Limited Liability Companies [33]. This law contains the characteristics of a legal entity, including a partnership based on an agreement held by more than one person and a sole proprietorship owned by one or more people [14]. In contrast, Indonesia's PT Law offers a different definition, which is as follows:

"A Limited Liability Company, hereinafter referred to as a company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is wholly divided into shares and fulfills the requirements stipulated in this Law and its implementing regulations."

The two definitions offered above are contradictory. In the United States, the legal entity of an LLC is recognized as a sole proprietorship, but LLCs are classified as capital partnerships under Indonesian PT Law. This can be easily translated as "A Limited Liability Company consisting of combined capital divided into numerous shares." [9]. Conducting commercial activities with permissible capital divided into shares results in the formation of an LLC, which is a legal company formed under an agreement [34]. This implies that it is an independent institution with its own rights and obligations, capable of carrying out legal proceedings both within and outside of the Court and owning assets apart from its management and founders.

Therefore, the assets owned by an LLC differ from those of its founders. Consequently, the assets managed by a Limited Liability Company are separated from one another, so the number of shares owned by shareholders is limited [35]. Businesses that are not legal entities, such as Firms, *Commanditaire Venootschap* (CV), and Civil Partnerships, are jointly and severally liable for losses up to their personal property. Because, in essence, businesses that are not legal entities lack the legal legitimacy from the responsible party, namely the government, to exercise their rights and obligations as legal subjects [14]. According to the previously discussed legal entity theory, a Limited Liability Company meets the present definition of a legal entity. A Limited Liability Company, like an individual, is founded by receiving "legal entity status that has been ratified by the state," in this case from the Republic of Indonesia's Ministry of Law and Human Rights. According to fiction theory, this means that a legal entity is personified as a human [35].

However, according to organ theory, just as humans have organs that perform specific functions, Limited Liability Companies have three key organs [36]: GMS, Directors, and Board of Commissioners. The GMS owns the capital, but management is the duty of the Directors and Board of Commissioners. Furthermore, the Board of Directors is responsible for representing the Limited Liability Company in and out of Court [1].

This refers to an LLC's objectives based on the principle of purposeful wealth. According to Brinz's previous opinion, wealth owned by a legal entity is unique and not owned by anybody else, including the legal entity's creator [15]. The Limited Liability Company owns all of its assets despite the fact that its money comes from its founders. A Limited Liability Company, which is essentially a legal entity, is founded on the principle of asset separation. As a result, when the founder of a Limited Liability Company spends capital to form the company, those money become the property of the limited liability company [17].

However, the joint wealth theory does not adequately explain the notion of the legal entity of a Limited Liability Company since it is based on the wealth owned by each legal entity owned by its members, which is based on the interests of the members who have joint rights and obligations [26]. According to this theory, a legal entity means

that all the business entity's assets are owned by its members. Finally, the theory of juridical reality posits that the existence of legal entities and individuals as legal subjects are both real. In other words, according to the principle of juridical actuality, a Limited Liability Company is fundamentally the same person as a competent individual in legal concerns.

According to the Job Creation law, individuals who meet the criteria for MSMEs can establish LLCs [37]. As defined in Article 1 of the PT Law, "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and it's implementing regulations [38]."

The Job Creation Law expands on the definition of a firm by introducing the word "Individual Company." According to the Law's Article 109, Section 1, "A Limited Liability Company, hereinafter referred to as a Company, is a legal entity which is a capital association, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares or legal entity owners."

Table 1. Comparison of the Individual Company Regulatory Differences Before and After the Job Creation Law

Aspect	Before the Job Creation Law	After the Job Creation Law
Legal Status	Individual companies were not recognized as legal entities. Individual entrepreneurs operated under their personal name or as MSMEs without the separation of personal and business assets.	Individual companies are regulated as individual legal entities, recognized as separate legal entities with distinct legal status.
Company Formation	Individual companies were required to register as MSMEs without legal entity status or establish a Limited Liability Company (PT) with at least two founders.	Individual companies can now establish a "One Person Limited Liability Company" as an individual legal entity without requiring more than one founder.
General Meeting of Shareholders (GMS)	No General Meeting of Shareholders (GMS) existed, as there was no legal entity to regulate. Decisions were made solely by the business owner.	GMS can be held, but in a simplified manner, where decisions can be made by a single shareholder with the same legal force as GMS in limited companies.
Role of Commissioners	No commissioners were involved in individual companies. Business management was entirely under the control of the owner.	No role for commissioners in a sole proprietorship, meaning the business owner has full control over operations and administration.
Legal Protection	There was no separation between personal and business assets, meaning business owners were personally liable for debts and obligations of the company.	The separation between personal and business assets is established, providing legal protection for the owner from personal liability for the company's obligations.
Investment Climate	Limited access for sole proprietors to financing and clear legal protection hindered the development of small businesses.	Individual companies with legal entity status facilitate access to funding and strengthen investor confidence through clearer legal protection.

The inclusion of the phrase "individual legal entities that meet the criteria for Micro and Small Enterprises as regulated in the laws and regulations concerning Micro and Small Enterprises" implies a new law permitting the formation of legal entities with only one shareholder [39]. According to this new definition, companies are now divided into two categories: those founded by two or more people and those established by one person [2]. However, the Job Creation Law does not explicitly define this new type of company. Once an individual company is identified, the definition should be explicitly specified to avoid broad interpretations. An individual company is a legal entity formed by an Indonesian citizen based on a declaration of establishment, with the founder's distinct assets serving as the primary capital and adhering to the criteria outlined in statutory laws on micro and small businesses [35].

Table 1 compares the regulation of individual companies before and after the Job Creation Law. This table presents the main differences between the two regulatory periods.

3.2. Legal Position of the General Meeting of Shareholders in Individual Companies

Individual Companies are considered unreal entities with no will and, hence, unable to carry out their activities independently. They must establish organs to operate in accordance with the law. The only organs inside the Individual Company institution are the General Meeting of Shareholders (GMS) and the Board of Directors, which carry out the responsibilities and obligations specified by law [18]. The GMS, as a Company organ, has the authority to exercise any powers not delegated to the directors, whereas shareholders have primary authority to obtain information. Internally, a limited liability corporation is a legal entity with legal relations that comprise applicable rules and regulations, the company's articles of incorporation, and commonly accepted legal concepts.

The previous relationship limits the freedom of shareholders, directors, and commissioners, all of whom have responsibilities. Consequently, these things provide shareholders, commissioners, and directors with instructions, restrictions, and approvals[2]. The General Meeting of Shareholders, not the shareholders, serves as the company's governing body. The GMS, as the company's highest organ with the authority to establish its course and goals, has the right to obtain all necessary information regarding its interests and operations[15]. The GMS has exclusive authority, which cannot be delegated to other organs. According to Article 63 paragraph (91) of the Company Law, the GMS's jurisdiction does not extend to directors and commissioners[40]. Thus, the GMS's scope of authority is as follows:

- a. Appointment and removal of commissioners and directors.
- b. The GMS's ability to modify the articles of association.
- c. The GMS's competence to define regulations controlling the division of tasks and authority among members of the board of directors, as well as the amount and type of income of directors and
- d. The GMS can appoint one or more shareholders to represent the company when the directors lack the authority to act.

- e. Has authority over the company's bankruptcy petition, which the directors will file with the District Court.
- f. The GMS has the authority to request information from directors and commissioners regarding the company.

However, the GMS of an individual company and the GMS of a limited liability company differ in several ways. Articles 75–91 of the PT Law define the GMS's procedures and regulations. A Limited Liability Company has several shareholders, but an Individual Company only has one shareholder who acts as the Director. As a result, it makes no difference whether the procedures and rules stated in the Limited Liability Company GMS are applied to the Individual Company GMS. The GMS, also known as the "General Meeting" in limited liability companies, adheres to specified protocols and is the product of shareholder consensus. In contrast, individual corporations can only make GMS choices in the form of shareholder decisions, which have the same legal effect as the GMS (Article 8 paragraph (5) PP No.8 of 2021) [16].

Essentially, an Individual Company mirrors a Limited Liability Company but features a simplified structure in various aspects[18]. Furthermore, being a legal entity, a Limited Liability Company has the authority to carry out business activities [17]. A limited company's organs are regarded as its equipment and consist of three individuals: the Board of Directors, the General Meeting of Shareholders (GMS), and the Board of Commissioners. A Limited Liability Company's three organs may each be owned by a different person. In contrast, individual companies consist just of the Board of Directors and the GMS, whereas the post of the Commissioner is eliminated [26].

The founder of an individual company is also mentioned as a director in the incorporation document. The newly amended UUPT's Articles 153D and 153F govern the directors' duties. Given that an Individual Company is formed by a single person, the GMS mechanism has evolved. Previously, the GMS mechanism was governed by requirements set out in the Company Law. According to Article 8 paragraph (5) of PP No. 8 of 2021, a GMS can only be constituted through a decision made by individual firm shareholders, who have the same legal power as a general shareholder meeting [30].

Individual companies may change their declaration of establishment in accordance with Article 153C UUPT. This article states that (1) Changes to the statement of company establishment for small and micro enterprises described in Article 153A are determined by the GMS and communicated electronically to the Minister; (2) The Regulation on Changes to the Statement of Establishment regulates additional provisions related to the material and format of changes to the statement of establishment specified in paragraph 1 [41].

Given the information offered above on changes to the statement of establishment, it is reasonable to assume that shareholders of an Individual Company have the right to modify the complete statement of establishment. This decision has the same legal authority as a general meeting of shareholders, and it is submitted to the Minister for a certificate of adjustment to the statement, which includes changes to the Individual Company's founders. The fifth section of the Job Creation Law, Article 153J, provides that "(1) shareholders of micro and small companies are not personally responsible for

agreements made on behalf of the company and are not liable for company losses exceeding the shares owned by the company" [42].

Due to the existence of Individual Companies governed by the Job Creation Law, the feature of wealth separation has become minor and cannot be clearly recognized. An Individual Company's assets may intermingle with the company owner's personal assets because of its single-level organ, which allows a single shareholder to serve as a director in the absence of a commissioner. This differs from the company model specified in the PT Law, which has three key organs: the GMS, the Board of Directors, and the Board of Commissioners [28]. The various functions and responsibilities of these three organs ensure that every decision and action made by the firm is properly documented and monitored. In other words, if these organs do not exist in the structure of an individual organization, a vital portion of monitoring will be missing from the company's essential concept [42].

According to Article 13 of PP 8 of 2021, a GMS is in charge of choosing whether or not to dissolve an individual company. This article raises misunderstandings about which GMS models should be adopted by individual businesses. Article 8 further provides that individual firm shareholders' choices have the same legal weight as those made by the GMS. As a result, efforts have been undertaken to equalize the legal legitimacy of GMS' decisions with those made by the lone proprietor of an Individual Company. A GMS is an organ having no authority assigned by the Board of Directors or Commissioners. However, in an Individual Company, a single person may perform both functions, thereby integrating the two organs. As a result, comparing the two types of judgments oversimplifies the situation and may lead to the emergence of new challenges [28].

Furthermore, the Job Creation Law does not include a comprehensive description of an Individual Company. According to the law framework, the government aims to capitalize on both sorts of businesses: Limited liability corporations and sole proprietorships. Compared to the corporation business model, a sole proprietorship is quicker to establish and more flexible. This approach lays the groundwork for a new concept of private enterprise. Although possibly at first look, this raises issues about the fundamental principles underlying the limited company and the difficulties in distinguishing it from a limited corporation [30].

The government's goal in enacting Law No. 11 of 2020 on Job Creation is to simplify the formation of Limited Liability Companies. This law is meant to allow micro, small, and medium-sized businesses to grow and thrive while also attaining legal entity status. By definition, a legal entity must have its founders, members, and investors, enabling it to conduct business, manage assets, enter contracts, and so forth under its name, just like a person [35]. Legal entities are also required to pay taxes and seek activity permits, among other things. One key component of corporate status is that the founder's assets are kept separate from those of the legal entity. This implies that a company's founders' culpability is limited to the money held within it, known as the "going concern" principle. In other words, the company will be unaffected by the founder's death, changes in share ownership, the acquisition of new money from third parties through securities market trading, or bankruptcy.

4. Conclusions

Legal entities are recognized as legal subjects in Indonesia, and Individual Companies' legal standing is defined by the Job Creation Law, which is based on the notion of a Limited Liability Company. Institutional theory and contemporary legal science both contribute to the establishment and operation of private companies. In this framework, agreement and institutional theory are used to manage the firm. An Individual Company with only one shareholder who also serves as the Director can only make GMS choices in the form of shareholder decisions, which have the same legal status as the GMS.

In a Limited Liability Company, the three organs can be owned by separate people, ensuring a separation of powers and responsibilities. In contrast, individual corporate organs are simplified, consisting just of the Board of Directors and the GMS, with the post of Commissioner abolished. The founder is also mentioned as a Director on the Statement of Incorporation for an Individual Company. Because an Individual Company is created by a single person, the GMS process shifts. Prior to the Job Creation Law, the GMS mechanism was applied in accordance with the terms provided in the Company Law. A GMS can only be formed by the shareholders of an individual company and has the same legal effect as a general meeting of shareholders.

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