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Legal Security for The Board of Directors of Individual Limited Companies in The Event of Bankruptcy

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Abstract: Legal Certainty for Directors of Individual Limited Liability Companies in Case of Bankruptcy, The enactment of Law Number 11 of 2020 concerning Job Creation has given birth to a new type of PT, namely a company that meets the standards of micro and small businesses, or as per Government Regulation Number 8 of 2021 concerning the Authorized Capital of Companies and Registration, Establishment, Amendments and Dissolution of Companies, it is stated that those that meet the requirements of micro and small businesses are called Individual Companies. This scientific article uses normative legal research or library legal research, namely research conducted by examining library materials or secondary data, and the type of research in this writing is normative legal research, namely it is studied with a statutory approach, meaning that a problem will be seen from its legal aspect by examining statutory regulations. The results of the study show that the Law in Indonesia still needs to be completed to form regulations regarding this individual company in separate statutory regulations outside of limited liability company law. An important conclusion from this study is that PT should ensure that the principles, regulations and essence of individual companies in the Job Creation Law do not conflict with the principles, regulations and essence of limited liability companies in the limited liability company law.

Keywords: Legal Certainty, Limited Liability Company Law, Individual Limited Liability Company

INTRODUCTION

The development of the business world is currently experiencing very rapid growth in various fields. With this business growth, it will certainly affect the economy of a country. This situation encourages a country to continue to make changes. (Dewa Gede Agung Putra Diatmika & Ni Putu Purwanti, 2020) If we look at the economic growth of Indonesia's industrial and trade sector, especially in the current digital trade era, we can see that it is heading in a positive

direction, this is supported by the fact that the number of companies in Indonesia has increased. A company is an activity that is carried out continuously with the aim of making a profit. (Louis Simon Hansen, 2021)

The existence of a company has an important role in the progress of a country, because it can create jobs for the community, so as to realize the prosperity and welfare of society. (Indah Siti Aprilia, 2020) In positive law in Indonesia (*ius constitutum*) has regulated the form of the company, and the forms of companies that exist in Indonesia include Trading Company, Civil Partnership, Firm, Commander Partnership, and Limited Liability Company (PT). (Ni Made Dharyanti, 2017) Each form of company has different characteristics, one form of company with its distinctive characteristics is the Limited Liability Company, which is the most popular form of several existing forms of business entities. One of the characteristics possessed by PT is that PT is a legal entity, so it has separate assets from its shareholders. The provisions regarding PT are regulated in Law No. 40 of 2007 concerning Limited Liability Companies.

Regulations on business entities are also regulated outside the Commercial Code (KUHD), such as PT for indigenous groups, so that there is a dualism of corporate legal entities that apply to Indonesian citizens. (Sandra Dewi, 2019) The regulation on Limited Liability Companies continues to develop, and has undergone repeated changes, such as the definition of PT contained in Article 1 number 1 of Law Number 40 of 2007 concerning Limited Liability Companies which has been amended by Article 109 number 1 of Law Number 11 of 2020 concerning Job Creation which is then known as the Job Creation Law. Article 109 number 1 of the Job Creation Law states that what is meant by a Limited Liability Company is a legal entity of capital alliance, which is established based on an agreement to carry out business activities with authorized capital, all of which is divided into shares or individual legal entities that meet the criteria of Micro, Small and Medium Enterprises. In general, a characteristic of an individual company in general conception is that the rights and responsibilities of the founder of an individual company are attached to the company owner himself (*eigenaar*), the company does not have a corporate body (*bedrijfsorganen*) so that it is not in the form of a legal entity. (Natzir Said, 1987)

With the enactment of Law Number 11 of 2020 concerning Job Creation, a new type of PT has been born, namely a company that meets the standards of micro and small businesses, or as stated in Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration, Establishment, Change and Dissolution of Companies, it is stated that those that meet the requirements of micro and small businesses are called Individual Companies, the existence of which results in the opening of opportunities for MSMEs with small capital to have a legal entity in the form of a PT where an Individual Company is also referred to as a sole trading business organization, where only one party acts as a trader or sole trader. Sole traders usually get their capital from their own or personal savings or bank loans. Nindyo Pramono, 2012) This Individual company model is also widely recognized in the UK and the European Union, and is also used in several other countries. (Aziz Muhammad Faiz, 2020)

The regulation on Limited Liability Companies in the Job Creation Law has several differences with the Limited Liability Companies regulated in the Law on PT. The government also provides several facilities for Individual Companies including the amendment of article 1 number 1 regarding the definition of PT and also facilities regarding the procedures for establishing a PT, which have been regulated in article 7 of the PT Law, which initially had to be established by 2 or more people using a Notarial deed in the Indonesian language, now no longer applies to Individual Companies. As stipulated in article 153A number 3 of the Job Creation Law in the case of the establishment of a PT, it can be done by 1 (one) person and can also be established based on a statement of establishment made using the Indonesian language

so there is no need for a Notarial deed. With this new regulation, it will certainly be very easy for business actors to establish an Individual Company, because if based on the old rules if someone wants to establish a Limited Liability Company, then that person must first come to a Notary to be able to accommodate his intention of establishing a Limited Liability Company. (Irene Svinarky, 2019)

The presence of the Job Creation Law that amends the provisions of Article 32 of the Company Law regarding the obligation to have a minimum authorized capital of Rp.50,000,000,- (fifty million rupiah) with at least 25% must be placed and fully paid up, into the amount of the Company's authorized capital determined based on the decision of the founders of the Company. The existence of this minimum capital concept makes relaxation and convenience in the amount of authorized capital for the establishment of a PT, and this also applies to MSME Companies, namely by placing and fully depositing the authorized capital of at least 25% as evidenced by valid proof of deposit, it makes it easier for MSME businesses to have legal certainty in creating a limited liability company, because not all MSMEs have large capital. Based on the Government Regulation on the Company's Authorized Capital as well as the Registration, Establishment, Amendment and Dissolution of a Company that meets the criteria for micro and small businesses in Article 6 states that the founders of an Individual Company must be Indonesian Citizens As for the authorized capital of an Individual company, it does not regulate the minimum capital deposited into the company.

Capital in a PT is known there are 3 (three) capital, the first is the authorized capital of the company, what is meant by the authorized capital of the company is the amount of capital desired by the founders and contained in the deed of the Company up to the maximum amount of capital if all shares are issued, the second is issued capital, namely the amount of capital agreed by the founders of the company to be included in the Company, the third is paid-up capital, namely capital that is entered into the company and for cost capital is capital realized in the form of a sum of money. PT has an important role in the development of the Indonesian economy so that its existence needs to be given a strong legal basis in order to be able to encourage national development which is structured as a joint business based on family principles, and still adheres to the principles of justice in trying to increase the micro business sector also has a significant positive impact on the Indonesian economy. Based on the background above, the problem that arises is How the Legal Certainty of Individual Limited Liability Company Directors in the Event of Bankruptcy.

METHOD

Scientific Articles Legal Certainty Against Directors of Individual Limited Liability Companies in the Event of Bankruptcy using normative legal research or library legal research, namely research conducted by examining library materials or secondary data only. (Soerjono Soekanto, Sri Mamudji. 2003) *The* type of research in this writing is normative juridical research, which is studied with a *statutory approach*, meaning that a problem will be seen from its legal aspects by examining statutory regulations. (Restu Adhie Charisma, Aji Lukman Ibrahim, 2023) Data collection techniques in this study, with primary, secondary and tertiary legal materials collected based on the topic of the problem formulated and reviewed according to the classification of problems according to their hierarchical sources in a coherent manner related to Legal Certainty Against Directors of Individual Limited Liability Companies in the event of bankruptcy by analyzing data / legal materials in this study by means of literature studies (*library research*), namely by means of Library research is research conducted using literature (literature), Both in the form of books, notes, and reports on previous research results, and statutory regulations, which describe and connect so that they are presented in systematic

writing to answer the problem questions above. (Iqbal Hasan, 2008)

RESULTS AND DISCUSSION

Legal Certainty for Directors of Individual Limited Liability Companies in the Event of Bankruptcy

MSEs (Micro and Small Enterprise) are one way to prosper the community, even with limited capital, business people are still creative in order to advance income and get income. In order to support this, the Indonesian government enacted the Job Creation Law along with several implementing regulations. Government Regulation Number 8 of 2021 in article 1 number 1 recognizes the existence of a company which is a legal entity or individual legal entity that meets the criteria for micro and small businesses. Article 1 point 2 determines that the establishment of an individual company is established by 1 (one) person electronically. This provision is a new requirement in the establishment of an individual company in general, which is regulated in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law). A Limited Liability Company is a more modern business organization, because the division of duties and authority between one organ and another is clear, and is contained in the articles of association, for example there are Directors, Commissioners and General Meeting of Shareholders (CST. Kansil, Cristine S.T, 1996)

The authorities of the 3 (three) organs complement each other. Article 7 paragraph 1 of the Company Law states that the Company is established by 2 (two) or more persons by notarial deed. This provision was later amended by the Job Creation Law which stipulates that the minimum establishment of a company can be only 1 (one) person. However, not all companies can be established with only one person, there are criteria for micro and small businesses that must be met. Article 6 of Government Regulation Number 8 of 2021 regulates that those who can establish an individual company are:

- a) Individual companies are established by Indonesian citizens by completing a Statement of Establishment in the Indonesian language;
- b) Indonesian citizens who are at least 17 years old and legally capable;
- c) The Company will only obtain legal entity status after it is registered with the Minister and obtains an electronic registration certificate;
- d) Which is then announced on the official website of the directorate general of law and human rights; and
- e) And the company is required to have authorized capital.

According to Minister of Law and Human Rights Yasonna Laoly, explained that the Government continues to improve the ease of doing business for Micro and Small Enterprises (MSEs). For example, by providing convenience in the form of a new legal entity in the form of an individual company with limited liability. Business actors can establish a PT without the need for a notarial deed. (Aji Prasetyo, 2021) This policy does not intend to eliminate the role of notaries, but this Individual Company still requires the role of a notary in terms of consulting on the establishment of an Individual Company or assisting business actors in terms of establishing an Individual Company electronically, for example in making Articles of Association, this still requires a Notary or other appropriate services for the good and smooth running of the company. According to Minister of Law and Human Rights Yasonna Laoly, this Individual Company will provide protection for MSE actors, among others:

- 1) Business actors who establish an individual Company occur the separation of personal and corporate wealth in the form of capital participation;
- 2) Businesses can also access financing in the form of loans from banks;
- 3) This individual company is one-tier, or a single shareholder who doubles as a director without the need for commissioners; and
- 4) The tax to be paid is also cheaper than a limited liability company or individual income tax and will be given a tenor of payment for a certain time.

A company in general is an independent legal entity with its own rights and obligations. These rights and obligations mean that its assets and wealth are separate from the personalities of its management. (Rahadiyan, I, 2013). Business actors who want to establish an Individual Company are not easy, but must fulfill several conditions determined by the government, individual companies can only be established for Micro and Small business criteria, including:

Micro business requirements:

- a) The business capital entered into an Individual Company is not more than Rp. 1,000,000,000 (one billion), such capital does not include the land and building of the place of business; or
 - b) the sales revenue does not exceed Rp.2,000,000,000 (two billion) per year.
- Meanwhile, the requirements for small businesses:
- a) The business capital entered into an Individual Company is more than Rp. 1,000,000,000 (one billion) to Rp. 5,000,000,000 (five billion), such capital does not include the land and building of the place of business; Or,
 - b) has annual sales of more than Rp.2,000,000,000 to Rp. 15,000,000,000.

In addition to these requirements, Individual Companies are also required to prepare financial statements, such as profit and loss, financial records for the year and other financial statements, which will be reported to the Minister electronically no later than 6 months after the end of the current accounting period. Failure to do so may result in various sanctions. For example, sanctions, written warnings, termination of access rights to services or even revocation of legal entity status (Article 10 PP 8/2021). Individual companies must also change into a Company if the

Shareholders become more than one. This change can also occur if the Individual Company no longer fulfills the statutory provisions regarding micro and small enterprises (Article 9 of GR 8/2021). After that, the Individual Company must make changes by notarial deed, and be registered with the Minister. An Individual Company can also be dissolved by a resolution of the shareholders of the Individual Company which has the same force as a GMS (Article 13 of GR 8/2021). In addition, it is dissolved for other reasons, among others:

- a) The period of incorporation stipulated in the Statement of Incorporation has expired;
- b) On the basis of a court order;
- c) The bankruptcy is revoked based on the decision of the commercial court, then the bankruptcy assets of the Individual Company are insufficient to pay the bankruptcy costs;
- d) Bankruptcy assets of the Company that has been declared bankrupt; and
- e) Inclusion of individual business license.

Bankruptcy of an Individual Corporation

Bankruptcy is a situation where the debtor is unable to make payments on the debts of his creditors. This situation is due to the difficulty of the financial condition of the debtor's business (Hadi S, 2018) In this case, those who can be declared bankrupt are:

- a) Individual person (individual);
- b) Unincorporated associations and associations; and
- c) Even companies, associations, foundations, cooperatives that are legal entities, but the provisions in accordance with the Articles of Association of these legal entities apply. (Fuadi, M. 2005)

The requirements to be able to file for bankruptcy according to Article 2 Paragraph (1) and Article 8 Paragraph (4) of Bankruptcy Law No. 37 of 2004 there are 2 (two) conditions, namely:

- 1) There are two or more creditors. A creditor is a person who has a debt based on an agreement or law that can be collected in court; and
- 2) There are debts that are due and collectible.

Both of these conditions must be proven simply, what is meant by being able to be proven simply according to online law, for example, such as giving a warning to the debtor, but the debtor still does not pay his debt, or the creditor proves that the debtor's debt is due. (Sovia Hasanah, 2016) When looking at the concept of bankruptcy in a limited liability company, the director has responsibility for all the consequences of each of his actions in running the company in accordance with the Articles of Association, as long as the director exercises authority based on the existing Articles of Association, the company will bear all the consequences that occur from the director's actions. However, on the contrary, if the director's actions are carried out outside the authority of the Articles of Association, the company does not bear the consequences of these actions. (Wulandewi I Nyoman M. 2012). PP Number 8 of 2021 does not regulate if an Individual Company is petitioned for bankruptcy, because of the uniqueness of the Individual Company which is only established by one person and does not have a complete corporate organ like a PT. Individual companies are legal entities (*rechtspersoon*), like humans, legal entities also have rights, obligations and can enter into legal relations. Kansil, CST.1989) Legal entities also have assets, which are separate from the assets of the management. So that the responsibility also has limits.

In an Individual Company, even though it is only established by 1 (one) person, the liability is limited to the assets of the Company only, unless it can be proven that the action is beyond his authority in the articles of association, for example, the director commits negligence which results in the Individual Company suffering a loss, then he can be held liable up to his personal assets. In the event that an Individual Company is filed for bankruptcy, the director must be held liable on a limited basis (the assets of the Company), in accordance with the authority in the articles of association, creditors cannot request that the directors or founders (owners) bargain with their personal assets. This rule is indeed foreign in Indonesia, its application is also difficult to apply in Indonesia which adheres to the Anglosaxon legal system, unlike neighboring countries such as Malaysia, and Singapore which adhere to the common law system, so that the rules in the Job Creation Law can be implemented properly.

Parties that can be declared bankrupt In Article 2 Paragraph (1) of the Bankruptcy Law, it is stated that debtors can be individuals or legal entities. in his writing Imran Nating states that parties that can be declared bankrupt include: (Lubis, M. F. R. 2018)

1. Individual
2. Heirlooms (inheritance)
3. Company association (*holding company*)

4. *Guarantor*
5. Legal entity
6. Associations that are not legal entities
7. Bank
8. Securities company
9. Insurance companies, Reinsurance, Pension funds, and, State-Owned Enterprises (SOEs) Parties That Can File a Bankruptcy Petition Parties that can file a bankruptcy petition include:

(Abdul R. Saliman et al, 2005).

1. The debtor's own application;
2. Application of one or more of its creditors (According to Article 8 of the Bankruptcy Law before the court is obliged to take the debtor);
3. Bankruptcy must be by court decision (Article 2 Paragraph (1));
4. Bankruptcy can be at the request of discretion in the public interest (Article 2 Paragraph (2)), the court is obliged to summon the debtor;
5. If the debtor is a bank, a bankruptcy petition can only be filed by Bank Indonesia;
6. If the debtor is a Securities Company, Stock Exchange, Clearing and Guarantee Institution, Depository and Settlement Institution, Bankruptcy Petition can only be submitted.

The procedure for bankruptcy of an Individual Company is also the same as that of a Limited Liability Company, because both are legal entities, which are then regulated in the Bankruptcy Law. In Article 6 of the Bankruptcy Law, namely:

- a) The application for bankruptcy declaration is submitted to the President of the Court;
- b) The Registrar registers the bankruptcy petition;
- c) And the Registrar is obliged to reject bankruptcy applications for institutions referred to in Article 2 paragraph (3), paragraph (4) and paragraph (5);
- d) The Registrar will submit the bankruptcy petition to the President of the Court no later than two days after the petition is filed;
- e) Within 3 (three) days, the court will study the petition and will set a hearing date;
- f) the examination hearing shall be held within a period not exceeding 20 days after the date on which the application is registered; and
- g) Upon the Debtor's request and upon sufficient grounds, the Court may adjourn for up to 25 days after the application is registered.

As a result of this bankruptcy, the PT will not lose its existence, but its authority to manage the PT and its liquidation, which will then be replaced by the Curator chosen by the Creditors. (Purbandari.2014). Therefore, even though it is not regulated in detail by the Job Creation Law, an Individual Company can be filed for bankruptcy with the procedures for filing a PT bankruptcy petition, and is still guided by the Bankruptcy Law.

CONCLUSION

Legal certainty against directors in the event that an individual limited liability company experiences bankruptcy is the absence of clear legal certainty governing legal certainty against directors in the event that an individual limited liability company experiences bankruptcy because the director has responsibility for all the consequences of each of his actions in running the company in accordance with the Articles of Association, as long as the director exercises authority based on the existing Articles of Association, the company will bear all the

consequences that occur from the director's actions. However, on the contrary, if the director's actions are carried out outside the authority of the Articles of Association, the company does not bear the consequences of these actions and suggestions. For the Government, it is necessary to formulate regulations regarding this individual company in separate laws and regulations outside the PT Law so that the principles, arrangements and essence of individual companies in the Job Creation Law do not conflict with the principles, arrangements and essence of limited liability companies in the PT Law. Then the provisions that specifically regulate individual companies, namely Article 109 paragraph (5) of the Job Creation Law jo. Article 153A to Article 153J of the Company Law is regulated in the Government Regulation regarding individual companies and not in the Job Creation Law and the Company Law. For directors or other organs of individual companies, when carrying out their duties, they must be in good faith and in accordance with the Company's Articles of Association and also the applicable law.

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