

Legal Entity Status of Individual Companies Which no Longer Meet the Criteria for Micro and Small Enterprises

Aninda Rehani, Sihabudin, Fathul Laila

Faculty Of Law University Brawijaya Malang, Indonesia

Email : anindarehani222@gmail.com

ABSTRACT

An individual company is obliged to modify its legal status to a Capital Partnership Company if it is considered as no longer applies for Micro and Small Enterprises (UMK) criteria. However, there are no provisions regarding the consequences if it is not made. It leads to unclear legal entity status and the responsibilities of individual companies which do not meet the standards of the Micro and Small Enterprises (UMK). This study aims to (1) analyze Individual Companies legal entity status which does not apply the UMK standards, and (2) analyze the legal implications of Individual Companies which no longer meet the UMK criteria. This study used normative juridical research method with a statutory approach and analysis of legal concepts. The results show that individual legal entity status of companies which do not meet the UMK criteria has not been rigidly regulated in the Job Creation Law or its regulations. However, individual companies which do not meet the UMK criteria are considered as no longer meet the legal entity requirements which are regulated in the Job Creation Law. Therefore, de jure, Individual Company legal entity status is no longer a legal entity, but de facto it is still registered as a legal entity. In addition, the legal implication is considered as the loss of the limited liability of the Individual Company.

Keywords:

Individual Company;
Legal Entity Status;
Limited Liability

INTRODUCTION

Micro and Small Enterprises (UMK) are considered as one of the most important pillars in the Indonesian economy. MSEs in operating their business have obstacles which can impact the progress of their business; such as, the lack of business capital owned by business actor since capital has a very important role in business continuity, and the lack of capital which can hamper the production process so that the profits obtained are not optimal. In addition, efforts which can be made to overcome obstacles in capital are business actors by applying for credit from banks.

However, in reality, in accessing bank credit, MSEs face various obstacles due to the status of MSEs as not having a legal entity. In fact, one of the requirements of the banking sector in providing credit assistance is to assess the feasibility of providing loans in order to ensure business sustainability. The feasibility of providing this loan can be seen from the financial reports of businesses which are legal entities. Therefore, MSMEs can easily obtain bank loans by changing their business status to a legal entity.

The Job Creation Law creates individual companies as legal entities. Regulations regarding Individual Companies as legal entities aim to increase the role and potential of Micro and Small Enterprises (UMK), which is expected to strengthen the economy, creating equality and increasing people's income. Furthermore, the provisions regarding Individual Companies in the Job Creation Law are specifically contained in Article 109, which updates several articles in the Limited Liability Company Law.

The conditions which should be met in order to establish an Individual Company as a legal entity are to meet UMK criteria, as regulated in Article 153A concerning on

Limited Liability Company Law. An Individual Company is formed by one individual by completing statement of establishment electronically. After fulfilling legal requirements for establishment and obtaining proof of registration, the Individual Company will be given proof of registration. In contrast to the requirements for Limited Liability Company (PT), Individual Companies are not required to announce their establishment in the TBNH. Hence, it is expected to make it easier for business actors in order to establish legal business entities and process business permits. Moreover, it is expected that many investors from within and outside the country will invest their capital in Indonesia so that it can move the wheels of the national economy which will ultimately bring prosperity to all Indonesian society.

Like other legal entities, Individual Companies also have limited liability. By applying the principle of limited liability, individual company share owners are not responsible for losses to their personal assets, as explained in Article 153J of the Limited Liability Company Law. It causes assets separation between the company and share owners. Moreover, Individual Company, as legal entity, has an obligation, including as outlined in Article 153H of Company Law, to modify its status to a capital partnership company if it no longer meets the UMK criteria. Further regulations on the obligations of Individual Companies are outlined in Article 9 PP No. 8 of 2021.

Regarding the obligations of individual companies, there is a legal gap in which there are no regulations governing the legal consequences if an individual company does not conduct its obligations in accordance with Article 153H to modify its status to capital partnership company. This regulatory vacuum certainly results in unclear status of legal entities and the legal responsibilities of individual company share owners who do not meet the criteria. Therefore, it is important to regulate the legal responsibilities of individual companies regarding the provisions of Article 153H in order to provide certainty and guarantee legal protection for the company's creditors or shareholders.

METHOD

This study required a normative juridical approach focusing on Article 153H of the Limited Liability Company (PT) law in which discusses the legal entity status of individual companies and the obligations of individual companies which no longer meet the requirements to change into capital partnership companies. The legal material research method used was library research while the legal material analysis method applied was systematic interpretation.

RESULTS AND DISCUSSION

1. Legal entity status of an individual company which no longer meets for Micro and Small Enterprises criteria

Legal certainty has crucial role in order to achieve legal objectives. In organizing a country it should be based on law since Indonesia is considered as a legal country. In Scheltema's opinion, he explains that "one of the elements of the State is legal certainty". The objectives of the law itself consist of justice, legal certainty and expediency. Legal certainty can be achieved when it is supported by rules which are clear, consistent and accessible to the public. Therefore, it means that legal certainty can be seen from the applicable legal norms. Indonesia is a country which adheres to the continental legal system so that the legal certainty provided will be stated in statutory regulations.

Individual companies emerged as new legal entities or subjects based on the amendment to Article 1 number 1 of the Limited Liability Company (PT) law of 2007 to become the Job Creation Law. According to this definition, a company is considered as legal entity in the form of a capital partnership which is formed based on agreement which conducts its business with share capital divided into several parts, or an individual legal entity which meets micro and small businesses criteria according to the relevant law. From this explanation, companies are divided into 2 types that are capital partnership companies and individual companies.

Individual company legal entity model in a legal entity is considered as a concept which provides legal protection to entrepreneurs. It is conducted by separating personal and business assets in order to make it easier for entrepreneurs to obtain funding from financial institutions. An individual company is a type of trading business which is managed by one subject, so that both the investor and the sole shareholder only have limited responsibility for the capital paid in at the time of establishing the company, in accordance with the concept of Limited Liability Company.

Individual company establishment as legal entity is regulated in Articles 153A to Article 153E of the Company Law, which is further explained in PP No.7 of 2021. This regulation sets criteria for MSEs based on business capital and sales turnover. Micro businesses are defined as businesses with maximum capital of one billion excluding land and buildings and a maximum sales turnover of two billion. Meanwhile, Small Businesses have business capital criteria of more than one billion and it is not more than five billion, excluding land and commercial buildings with an annual sales turnover of between two billion and fifteen billion.

In addition to meeting the requirements as a Micro Enterprise (UMK), based on Article 153A concerning on Company Law, establishing an individual company requirements are that it must be established by one Indonesian citizen who fills out a statement of establishment. Thus, individual Company status is obtained after the registration process and receipt of registration proof. The founders of the company are also exempt from the obligation to make announcements in the TBNH, which aims to simplify the bureaucratic process.

Along with possible developments and progress in its business activities, Individual Companies may no longer remain classified as Micro and Small Enterprises. Therefore, based on Article 153H concerning on the Company Law, an Individual Company has the obligation to modify its status into to Capital Partnership Company if it no longer meets the UMK criteria as regulated in Article 153A. Furthermore, the regulations on obligations of Individual Companies are explained in Article 9 PP No. 8 of 2021.

There are no provisions governing the legal consequences if an Individual Company does not conduct the obligations of Article 153H Limited Liability Company Law (UUPT). This causes legal uncertainty on the legitimacy of the business entity. It is unclear whether an Individual Company is still considered as legal entity or not, considering that it no longer meets the requirements to be considered an Individual Company, namely the criteria for being an MSE. The absence of provisions regulating the legal consequences of Article 153H of the Company Law also creates uncertainty regarding the company's responsibility towards creditors.

According to the theory of legal certainty presented by Apeldoorn, legal certainty has two dimensions. First, the dimension which allows concrete legal determination, so that all parties involved in the justice process can know the law which

applies in a case before the matter is submitted to court. Second, the legal security dimension which emphasizes protection for all parties from abuse of power by judges. Therefore, legal certainty can be interpreted as clear and fair legal rules which protect the rights of every individual involved.

The lack of clarity in the law regarding the consequences for Individual Companies which no longer meet UMK criteria results in legal uncertainty on the status of Individual Companies that have exceeded the UMK Criteria. In addition, uncertainty regarding the Individual Company legal entity status which no longer meets the UMK requirements has an impact on uncertainty regarding the limited liability of Individual Company. In the absence of certainty, law loses its meaning since it cannot become a basis for individual behavior. The aspect of legal certainty shows consistency and firmness so that what is regulated is not just an abstract concept, but it is a reality which can be realized.

According to Algra, legal subjects, or what is also known as *rechts subjects* refers to every individual who has rights and obligations which have implications for legal authority (*rechtsbevoegdheid*). This legal authority is the ability to become the subject of certain rights. In order to conduct legal actions, legal subjects have authority which can be divided into two parts, namely *rechtsbevoegdheid*, which indicates the ability to have rights, and the ability to conduct legal actions and the factors which influence them. Moreover, Sudikno Mertokusumo stated legal subjects are defined as "everything which will acquire rights and obligations from the law." Subekti also stated a similar concept. Legal subjects are divided into 2 categories, namely human individuals and legal entities.

Wirjono Prodjodikoro defines a legal entity as a legal subject which, apart from being an individual, is capable of conducting legal actions with all related rights and obligations, and it has legal interests. According to E. Utrecht in Kansil, a legal entity is an entity which has the authority to own rights, not people or objects, but it has property which is separate from the rights and obligations of its members. Moreover, R. Soebekti explained that legal entity is considered as an organization or group which can act as a person, has its own property, and it is capable of being a plaintiff or defendant in a legal process.

According to Molengraff, legal entity rights and obligations arise collectively from all its members, since they have joint, undivided property. Each member not only has a share, but it also becomes one of the owners of all the assets of the legal entity. However, because the assets are separate, legal entities have separate rights and obligations from legal entities, so that they have the same position as individuals as legal entities. Therefore, legal entities can file a lawsuit or be made a defendant in court. The implication is that the existence or nonexistence of a legal entity does not depend on the desires or wishes of its members, but it is regulated by law.

Fiction Theory, which is one of the legal entity theories, can be used as an analytical tool in order to assess individual company legal entity status which no longer meets Micro and Small Enterprises criteria. Furthermore, based on Lawrence M. Friedman, fiction theory states that the legal personality of other human entities is imaginary. States, institutions, or corporations, cannot have rights or personality like humans, but they are treated as if they have personality.

The fictional theory introduced by Von Savigny at the beginning of the 19th century describes legal entities as an abstraction which is not concrete. According to this view, legal entities only exist in human thinking and have no real existence, but

they are brought to life in human minds to explain certain concepts. Legal entities in this context are created by the state but do not have their own substance, but are represented by humans to conduct actions.

Every individual is considered as a human being, and only individuals have legal capacity. Fiction theory is also known as entity theory or symbol theory. Looking at Von Savigny's background as the originator of this theory, it cannot be separated from the legal historical basis which he adhered to. In this opinion, the function of law is to follow changes which occur in society and validate these changes. Therefore, in the context of this study, the legal subject of Individual Companies can be considered as a change which must be approved by law.

In line with Von Savigny's view, Hans Kelsen considers legal subjects to have a fictitious nature. In his view, a person's rights are determined by objective rules such as law, not by the desires of the legal subject himself. Therefore, legal subjects are considered to exist due to legal construction, the results of which, according to Kelsen, are artificial. He explained that it is the legal organs which can conduct the construction of legal subjects so that they are not considered something fictitious.

Based on the fictional theory of legal entities, it can be concluded that legal entities are abstract things, not concrete things, legal entities exist since they are created or formed by the government through regulations or laws. Thus, the legal entity of an Individual Company initially did not exist because of the needs of society so that the existence of this legal entity exists since it has been created by law through regulations regarding Job Creation. In addition, Individual Companies as legal entities must fulfill the requirements set out in the Job Creation Law, one of which is meeting the UMK Criteria so that if these criteria are not met, Individual Company legal entity status is *de jure* no longer a legal entity, but *de facto* it is still a legal entity since it still has registration proof.

According to the concession theory proposed by Gierke, legal entities in a country do not have legal personality unless granted permission by law, which is basically ratified by the country itself. An important point in concession theory is the national sovereignty of a country. In this view, the state is considered equal to humans so that it has the authority to grant or revoke legal personality from groups or associations under its jurisdiction. Supporters of fiction theory; such as, Savigny, AV Dicey, and Salmond support this theory since they have almost the same view, namely that the existence of corporations (legal entities) comes from sources of legal power, which in the context of concession theory is the state.

Meanwhile, based on the Theory of Juridical Reality, a legal entity is considered as concrete entity although it even cannot be touched, it is not a fantasy, but it has a juridical reality. Legal entities are considered equal to humans as facts produced by law. Therefore, legal entities are created because of the law. Furthermore, according to this theory, to become a legal institution, an individual company must fulfill several conditions, including meeting the UMK criteria and determining only one citizen and submitting a statement of establishment of an electronic company in order to obtain a registration certificate. Thus, individual companies which no longer comply with UMK standards are considered as no longer meet the requirements as a legal entity.

2. Legal implications for individual companies which no longer meet micro and small businesses criteria

Every business activity creates a legal relationship between the parties. In this relationship, rights and obligations are not only as formal rules, but they also reflect

the balance of power between them. Rights are always accompanied by obligations and both of them are authorities given by law to individuals.

According to Logemann, in every legal relationship there is a party who has the right to demand the implementation of the agreement and a party who has the obligation to conduct it. Furthermore, legal relationships involve two main aspects: rights and obligations, which arise and disappear simultaneously from a legal event. This relationship involves three elements: individuals and other individuals exchanging objects with balanced rights and obligations, as in buying and selling. Objects which are the subject of rights and obligations are things such as houses, and the relationship between the owner of the rights and the party who has obligations or relationships with the related object; such as, in a rental agreement.

In contract law, the law guarantees that all parties fulfill their rights and obligations. Regulations regarding the rights and obligations of creditors and debtors in contracts reflect the fundamental principles of contracts. Moreover, rights and obligations in legal terminology refer to what should be accepted or conducted in relation to the object agreed upon in the contract. The object of the contract is the goal desired by all parties involved. Meanwhile, the exercise of rights and obligations in contract law is known as performance. Performance is the debtor's obligation in order to fulfill what he has promised based on Article 1234 concerning Civil Code. In the context of a contract, performance also reflects the implementation of agreement contents by parties who have agreed to the terms and conditions in the contract. In contracts, performance is also considered as the core of the agreement. The debtor's obligations in this case consist of schuld (debt that must be fulfilled by the debtor to the creditor) and haftung (wealth that is used as collateral to pay off the debt).

Etymologically, default refers to an error in which the party fails to conduct the performance in accordance with the stipulated provisions, even though the other party has been given a previous warning or summons. Furthermore, M. Yahya Harahap explained that default is non-performance in fulfilling contract performance which results in delays according to the predetermined schedule or implementation which does not meet proper standards. Moreover, according to Sri Siedewi Masjhoeri Sofyan's view, default includes two main aspects: first, achievements are still conducted but not in an appropriate manner; secondly, achievements are not conducted on time. Thus, default can be interpreted as an error or negligence on the part of the debtor which results in the non-fulfillment of the obligations contained in the contract with the creditor.

In Individual Company context as legal entity, there is a great possibility of conducting legal relationships with various parties. This legal relationship will result in obligations which should be fulfilled by the Individual Company. If an Individual Company fails to fulfill its obligations, this may result in default. If an Individual Company experiences default, it can be held legally responsible in court for the mistakes it has made.

The Individual Company legal entity has limited liability according to Article 153 J of the Company Law, so that the Directors as shareholders cannot be held responsible for company debts exceeding the company's assets. Furthermore, individual Companies must comply with the requirements of the Job Creation Law, including the UMK Criteria. However, over time, companies can develop and no longer fall into the MSE category. Therefore, an Individual Company should modify its status to an ordinary limited liability company. However, if there are no clear legal

consequences for not conducting this obligation, the company's legal status become unclear, which leads to uncertainty regarding responsibility towards creditors.

Shareholders of the UMK Company have limited responsibility towards the company, in accordance with Article 153 J paragraph 1 of the Job Creation Law. They are only responsible for the shares they owned when they founded the company. However, if certain legal violations are proven, they can be subject to unlimited liability in accordance with Article 153J of the Limited Liability Company Law (UUPT).

The piercing the corporate veil doctrine is used in order to prevent company owners or organs from hiding responsibility for the company's legal actions for their personal interests. Moreover, it ensures compliance with the articles of association and laws and confirms that limited liability does not apply if shareholders have bad faith, commit unlawful acts in the name of the company, or use company assets without permission, causing the company to be unable to pay off its debts. Thus, Individual Company shareholders can be subject to unlimited liability if they fulfill these requirements.

Related to the responsibility of individual companies which no longer meet the UMK criteria, we intend to analyze whether they can fulfill article 153J elements so that individual companies which no longer meet the UMK criteria can be asked for unlimited liability:

- a. Company requirements as legal entity have not been or are not fulfilled.
Individual Companies as legal entities should fulfill requirements regulated in the Job Creation Law, one of which is meeting UMK criteria so that if these criteria are not met, Individual Companies legal entity status is de yure no longer a legal entity but de facto it is still a legal entity since it still has registration proof.
- b. The element of proof of bad faith of shareholders, whether directly or indirectly using the company for personal interests. This element is difficult to prove since an individual company is only founded by an individual and shareholders also exercise the functional rights of shareholders as directors. It is difficult to determine the boundaries between the interests of shareholders and the interests of the company, so that it leads to great opportunities for shareholders to exploit the company for personal gain.
- c. There are elements of unlawful acts committed by shareholders on behalf of the company or shareholders who directly or indirectly use the Company's assets unlawfully which lead to Company's assets being insufficient to pay the Company's debts.

Proving this element will be very difficult since there is no commissioner organ in individual companies so that there is no supervision of the directors in running the company. The absence of a board of commissioners opens up opportunities for single shareholders to use the company's assets for their own interests, which can cause losses to creditors. This provision will experience difficulties when it is tried to be proven since there is no other organ which conducts supervision over shareholder services in general limited liability company organs.

Therefore, based on these statements, it is very difficult to fulfill the elements of article 153J so that individual companies which do not meet the UMK criteria are subject to unlimited liability since the boundaries are still unclear; besides, here is a vacuum in norms relating to the legal consequences that arise. If individual company shareholders do not meet the UMK criteria, then their status must be changed to a

Capital Partnership Limited Liability Company which cannot be implemented immediately. Thus, it is something that is crucial and must be regulated as soon as possible in order to create legal certainty for third parties if they experience losses caused by individual companies which no longer meet the UMK criteria.

CONCLUSION

Thus, based on the results of the study, it concludes that individual company legal entities status which no longer meet the UMK criteria has not been regulated rigidly in the Job Creation Law or its implementing regulations. However, individual companies which no longer meet the UMK criteria is no longer meet the requirements regulated in the Job Creation Law, namely meeting UMK Criteria so that if these criteria are not met, the de jure Individual Company legal entity status is no longer a legal entity, but in de facto its status is still registered as a legal entity.

The legal implications of individual companies that no longer meet the UMK criteria lie in their responsibilities. The responsibility of Shareholders of Individual Companies which no longer meet the UMK criteria is unlimited liability since Individual Companies that no longer meet the UMK criteria are de jure no longer a legal entity so that the limited liability provisions of Article 153 J paragraph (1) of the Company Law do not apply. However, it is not easy to demand unlimited liability from the sole shareholder of an individual company which does not meet the UMK criteria since de facto its status is still registered as a legal entity. Thus, the absence of provisions governing individual company legal entity status which do not meet the UMK criteria results in uncertainty regarding the responsibilities of individual companies that no longer meet the UMK criteria.

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