

## Legal Considerations Of Individual Companies As A Choice Of Current Form Of Business Entity (Case Study Of Individual Company R)

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### ABSTRACT

*As stated in Article 28D paragraph (2) of the 1945 Constitution which reads that everyone has the right to work and to get an imbalance and fair and proper treatment in work relations. The verse can be used as the basis that everyone has the right to work, Humans themselves as economic beings act as agents who carry out economic actions to meet their needs. One form of meeting these needs is to do business. The purpose of this study is to explain the existence of a new form of business entity, namely an individual company which is a new form of business entity which is a legal entity in accordance with Law Number 11 of 2020 concerning Job Creation (cipta kerja). In this study, I raised the formulation of the problem how the form of individual business entities compared to other business entities at this time. The author takes a sample from the practice of company R. So, the second formulation is How an sole proprietorship company can be the right choice for an sole proprietorship R still has several obstacles in practice, especially the form of business problems, as well as the role of a notary in the formation of a form of business entity. The method used in this research is juridical-normative. The results of this study indicate that an individual company can be the preferred form of business entity for a sole proprietorship R.*

### ABSTRAK

Sebagaimana yang tercantum di dalam UUD 1945 pasal 28D ayat (2) yang berbunyi Setiap orang berhak untuk bekerja serta mendapatkan imbalan dan perlakuan yang adil dan layak dalam hubungan kerja. Ayat tersebut dapat dijadikan dasar bahwa setiap orang berhak untuk bekerja, Manusia sendiri sebagai makhluk ekonomi bertindak sebagai agen yang melakukan tindakan ekonomi untuk memenuhi kebutuhannya. Salah satu bentuk pemenuhan kebutuhan tersebut adalah dengan melakukan usaha. Tujuan Penelitian ini ialah untuk menjelaskan keberadaan bentuk badan usaha baru yaitu Perseroan Perorangan yang merupakan bentuk baru badan usaha yang merupakan badan usaha berbadan hukum sesuai dengan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja. Dalam Penelitian ini saya mengangkat rumusan masalah bagaimana bentuk badan usaha Perseroan Perorangan jika di bandingkan dengan badan usaha lainnya saat ini. Penulis mengambil contoh sampel dari praktik perusahaan perseorangan R. Sehingga rumusan masalah yang kedua adalah Bagaimana Perseroan Perorangan dapat menjadi pilihan yang tepat untuk Perusahaan Perseorangan R dikarenakan Perusahaan perseorangan R masih memiliki beberapa kendala dalam praktiknya khususnya bentuk badan usahanya, serta peran notaris dalam pembentukan suatu bentuk badan usaha. Metode yang digunakan dalam penelitian ini adalah yuridis-normatif. Hasil dari penelitian ini menghasilkan bahwa perseroan perorangan dapat menjadi pilihan bentuk badan usaha bagi Perusahaan Perseorangan R.

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## I. INTRODUCTION

As stated in the 1945 Constitution article 28D paragraph (2) which reads Everyone has the right to work and get fair and decent remuneration and treatment in employment relations.(Undang-Undang Dasar 1945, n.d.) The verse can be used as the basis that everyone has the right to work, Man himself as an economic being acts as an agent who performs economic actions to meet his needs.(Paul J. Zak, 2008) One form of meeting these needs is to do business.

The individual form of business is the oldest and most common form of business entity used by entrepreneurs as a means of carrying out business activities.et al.(Agus Sardjono; et.al, 2016) The formation process that is easy, simple, and does not require certain formalities makes the Individual Company chosen by many people. In addition to individual businesses, if an entrepreneur wants to carry out his business activities with others, the people involved can use a partnership business divided into several forms. The form of business of the communion itself is qualified as follows: 1) general civil partnership (*maatschap*), 2) a firm (*veennootshap onder firma*), dan 3) communion of communion or better known as a CV (*commanditaire vennootshap*).(Agus Sardjono; et.al, 2016).

Civil Partnership (*maatschap*) is an agreement between two or more persons, which binds oneself to each other to enter into a communion (*inbreng* or contribution) to divide the profits and the benefits it provides.(Kitab Undang-Undang Hukum Perdata, n.d.) Sementara Firma adalah Persekutuan Perdata yang menjalankan kegiatan usaha di bawah nama bersama.(Kitab Undang-Undang Hukum Dagang, n.d.) CV is a Firm, but there are 2 types of allies, namely active allies, of which more than one, and allies of commanditer, allies who only provide capital but do not manage.(Agus Sardjono; et.al, 2016).

In this study, we will discuss individual company business entities more deeply, which are new forms that make companies established by one person can become a legal entities based on Law Number 11 of 2020 concerning Job Creation. Individual companies and individual companies have many similarities with individual companies. Individual Companies are the most common form found in everyday life. Laws and regulations in Indonesia do not require individual companies to register their businesses or obtain special permits from relevant government agencies to carry out their business. Because until now, there are not many regulations governing Individual Companies in Indonesia. The flexibility of the arrangement of the Individual Company is one of the main attractions for entrepreneurs in choosing the form of an individual business entity as the choice of the business entity they run. This is different from individual companies with several criteria as stipulated in the Job Creation Law and also has differences in the separation of responsibilities between owners and individual companies, which is a very significant differentiator between individual companies and individual companies. In this study, the author will raise a practical case study of an individual company, R, that has a plan to change the form of its business entity in the hope of providing legal and legal considerations Based on individual companies R.

The formulation of the problems that the author raised for this study include: What is the form of an Individual Company business entity when compared with other business entities today?; How an Individual Company can be the right choice for an Individual Company R?; How is the Role of a Notary in assisting the Establishment of an individual company?

## II. RESEARCH METHOD

In writing this scientific paper, the form of writing that will be used in this journal is normative juridical research or literature research, namely legal research carried out by adhering to existing laws and regulations and applies in Indonesia today. The types of data used in writing this scientific paper include secondary data with legal sources, namely:

### a. Primary Legal Materials

The primary legal materials that will be used in writing this scientific paper include Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that meet the Criteria for Micro and Small Enterprises.

### b. Secondary Legal Materials

Secondary legal materials that will later be used in writing this scientific paper include books, journals, scientific articles, internet searches, and also papers.

In this study, the data collection tool that will be used is through document studies with the aim of obtaining additional information and also useful thought concepts that are considered by the author's law. The data analysis method that will be used is qualitative, meaning that the data obtained will be read and analyzed by yourself based on the knowledge of the researcher and the form of the results of this study will later be in the form of descriptive-analytical

## III. RESULTS AND DISCUSSION

### 1. R Sole Proprietorship Background

Individual Company R is a family business originating from West Sumatra which was founded by Alm. MND with colleagues. After that, Individual Company R tried to develop its business outside Java with the intention of developing its business. The first branch of the individual company R was opened in Cipanas, Cianjur Regency by carrying out a pattern of cooperation between the late H. HZB and Alm's joint partner. HAS as the owner of the location but registered as an individual company. Until now the name of the Individual R company has increased and has had 58 branches in Indonesia. Individual Company R is a company that adopts sharia practices which later the distribution of profits will be carried out in a profit-sharing (not wage) basis to all people involved in the daily course of business of individual company R. In practice, the profit sharing is given like a pershare income by considering the worker as a partner. This is certainly not the right thing to do because for an individual company, the work system should be used, namely the practice of subordinate superiors using work contracts with the provision of work wages. Departing from this, individual company R wants to try to change the form of a business entity into a form that is more solid and efficient than an individual company, here the author hopes to make this scientific work as a consideration for individual company R later.

### 2. Definition of Individual Companies and Individual Companies

Individual Company as a form of business entity that is known by many people, especially in Indonesia because of its simple form and does not have a definite definition. Indonesia itself does not regulate the exact definition of an individual company by the state like the definition of other business entities such as Firms, Civil Partnerships, CVs, and Limited Liability Companies which are regulated in the Law issued by the state legislature. (Zainal Asikin dan Wira Pria Suhartana, 2016) However, due to the unclear definition of an individual company, there are several definitions given by several economists from various countries.

According to Zainal Asikin, the definition of a Sole Proprietorship is a company that is only carried out by one entrepreneur. Capital and also its management are also carried out by only an entrepreneur, if there are workers, then they are only as assistants to the entrepreneur in running his company based on an employment agreement or power of attorney. (Zainal Asikin dan Wira Pria Suhartana, 2016) Meanwhile, according to Mulhadi, a Trading Company (PD) or also known as a Trading Business (UD) is an Individual Company which is usually referred to as *One man corporation* or *een manszaak* which is usually only done or run by one entrepreneur in his company, with capital owned by one person anyway, the owner acts directly as a manager who is sometimes assisted by several workers who have the status of an entrepreneur's helper in managing his company based on an employment agreement or power of attorney. (Mulhadi, 2010) Meanwhile, according to Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises, Micro Enterprises are **productive businesses** owned by **individuals** and/or **individual business entities** that meet the criteria for Micro Enterprises as regulated in the MSME Law. (Undang-Undang Nomor 20 Tahun 2008 Tentang Usaha Mikro, Kecil, Dan Menengah, n.d.) Finally, according to Prof. Abdulkadir, a sole proprietorship is a **privately owned company** that is founded and owned by an individual entrepreneur which is not **a legal entity**. Individual Companies can have legal forms depending on their own field of business, namely industrial companies, trading companies, and service companies. (Muhammad, 1999).

Meanwhile, this is different from individual companies which clearly have a definition which is stated in the Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities which explains that an individual PT / Individual company is an **individual Legal Entity** that meets the criteria for micro and small businesses as stipulated in the Laws and Regulations regarding micro and small enterprises. (Permenkumham Nomor 21 Tahun 2021 Tentang Syarat Dan Tata Cara Pendaftaran Pendirian, Perubahan, Dan Pembubaran Badan Hukum Perseroan Terbatas, n.d.)

Minister of Law and Human Rights, Yassona Laoly explained that the concept of an individual company in outside countries does not make it a legal entity, in contrast to Indonesia in the UUCK which hopes to separate personal and corporate wealth. So that the responsibility of the owner of the company also includes the personal wealth of the owner and the spouse if married. This is considered a breakthrough in the form of an individual company typical of Indonesia. (*Mengenal Konsep Perseroan Perseorangan Di Indonesia*, n.d.)

### 3. Terms and Process of Establishing an Individual Company

Establishing an Individual Company is different from establishing a very simple individual company. however, behind these differences there are similarities such as, The establishment of individual companies and individual companies that do not require a special agreement because they are only established by one entrepreneur. (Muhammad, 1999) For Founders or entrepreneurs who will establish a Sole Proprietorship, it is only enough to design the articles of association of the company which will later be stated and written in the deed of establishment made before a notary with the help of a Notary. (Muhammad, 1999)

The conditions that must be met to establish an individual company include, namely: (Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja, n.d.) adanya KTP Pendiri Individual Companies; NPWP of the Founder of an Individual Company; The address of the Individual Company (If the address is in Jakarta, it must meet the zoning requirements in accordance with the Provincial Regulation of the Special Capital Region of Jakarta number 1 of 2014 concerning detailed spatial planning and zoning regulations); and a Statement of establishment of an Individual company, which will be registered electronically with the Minister of Law and Human Rights which must contain the name and place of domicile of the Individual Company; The period of establishment of an individual Company; The purposes and objectives and business activities of the Individual Company; The amount of authorized capital, issued capital, and paid-up capital; Nominal Value and Number of

Shares of the Company; The address of the individual company; and Full Name, Place of birth, Occupation, residence, National Identity number, and Taxpayer identification number of the founders and directors and shareholders of the Individual Company.

In the process of establishment, an individual company must be established by 1 person (including as a shareholder and Director, no commissioner), have micro and small business activities because in accordance with the definition contained in the Regulation of the Minister of Law and Human Rights Number 21 of 2021 that individual companies must meet the criteria for Micro and small businesses. Then, the Founder must make a statement of incorporation which has been mentioned previously.

The registration is carried out electronically through the Minister of Law and Human Rights of the Republic of Indonesia, after that the thing that must be done is to take care of the NPWP of individual companies and take care of the NIB and business licenses of individual companies which are almost similar in process to individual companies through the OSS system.(Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja, n.d.) Meanwhile, according to Government Regulation Number 8 of 2021, it is explained that the conditions that must be met by the founders of PT UMK or PT Individu are delivered. Pt Individu must be established by an Indonesian citizen by filling in the establishment requirements in the Indonesian; The Indonesian citizen must meet the minimum age requirement of 17 years old and be legally capable; The number of Shareholders is only one person; and The founder of an individual PT can only establish an individual PT once within a period of one year.

#### 4. Differences between Individual Companies and Capital Companies

Some Jurists have tried to define the company itself, according to Molengraff The company is a whole act that is carried out continuously, acting outwardly, to obtain an income, by selling or handing over goods or entering into a trade agreement.(Muhammad, 1999) Meanwhile, Polak views the company more from a commercial point of view, meaning that a company can be said to be a company when it is necessary to calculate profits and losses that can be estimated and also recorded books.(Muhammad, 1999) Meanwhile, in Indonesia itself has explained about its own company in Article 1 letter (b) of Law Number 3 of 1982 concerning Mandatory Company Registration, in the Law it is explained that a Company is any form of business that carries out every type of business that is permanent and continuous and is established, works and is domiciled in the territory of the Indonesian state with the aim of obtaining profits and or profits.(Undang-Undang Nomor 3 Tahun 1982 Tentang Wajib Daftar Perusahaan, n.d.)

Companies incorporated include Limited Liability Companies (PT), Cooperatives, Public Companies, Regional Companies, Foundations (Zainal Asikin dan Wira Pria Suhartana, 2016) and a new form, namely an Individual Company. The definition of Limited Liability Company consists of two words, namely "Company" and "limited". The Company refers to the PT Capital consisting of sero-sero or shares.(Zainal Asikin dan Wira Pria Suhartana, 2016) Meanwhile, based on Article 1 of Law Number 40 of 2007 concerning Limited Liability Companies, it has been explained that a PT is a Legal Entity which is a capital partnership, which was established based on an agreement to carry out business activities with an authorized capital that is entirely divided into shares, and meets the requirements set forth in this law and its implementing regulations, but the definition of this PT was changed after the enactment of Law Number 11 of 2020 concerning Job Creation which the definition changes to a Limited Liability Company, hereinafter referred to as a Company is a legal entity that is a capital partnership, established under an agreement, conducting business activities with an authorized capital that is entirely divided into shares or individual Legal Entities that meet the criteria for Micro and Small Enterprises as stipulated in the Laws and Regulations regarding Micro and Small Enterprises.

There are several differences between PT Individu and PT Biasa which the author will convey in the Form of a Table as follows:(*Perbedaan PT Perorangan Dengan PT Biasa*, n.d.)

Information	Individual PT	Ordinary PT
Understanding	Based on Permenkumham No. 21 of 2021, an individual company is an <b>individual legal entity</b> that meets the criteria for micro and small businesses as stipulated in the laws and regulations regarding micro and small businesses.	Based on Permenkumham No. 21 of 2021, the Capital Partnership Company is a <b>legal entity</b> of <b>capital partnership</b> established under an agreement and carries out business activities with an authorized capital which is entirely divided into shares.
Company Founder	It must be an Indonesian citizen, a private person and only 1 founder.	Private persons of Indonesian citizens / foreigners / Indonesian Legal Entities / Outside Indonesia, At least 2 founders.
Director	Founder as a shareholder and Board of Directors of the company.	Minimum 1 Director.
Commissioner Capital	No Commissioner. Agreement from the founder himself a maximum of 5 M worth	Minimum 1 Commissioner. The agreement of the founders and there is no maximum limit on capital.
Organs of the Company	No organs	GMS, Board of Directors, Board of Commissioners.
Company Business Expansion	In Article 153 of the UUCK, it is explained that the founder can only establish a PT Individu 1 time a year	There are no provisions governing
Establishment of PT	Without a Notarial deed, it is only necessary to fill out the statement of incorporation form electronically	Must be made by a Notarial Deed in Indonesian
Company Changes	Changes to the Company are made only by filling in the data that will be changed in the format of the Change Statement. The minister will later issue a certificate of change statement electronically.	Changes in the Articles of Association and/or changes in the Company's data are determined through the GMS contained or stated in the notarial deed in the Indonesian submitted electronically through SABH by filling in the change format equipped with information about supporting documents
Financial Statements	Individual Company Financial Statements must be reported to the Minister by filling in the format of submitting financial statements electronically through SABH no later than 6 (six) months after the end of the current accounting period. If you do not submit financial statements within a period of time, there will be sanctions from the Minister.	None. special rules regarding financial statements.
Dissolution.	The dissolution of the individual Company is carried out by filling in the format of the dissolution statement through SABH electrically.	The dissolution of the Company occurs if: a. Based on the decision of the GMS; b. Because the period of establishment stipulated in

- the Articles of Association of the Company has expired;
  - c. Based on the court's determination;
  - d. with the revocation of insolvency based on the decision of the Commercial court which has permanent legal force.
  - e. Because the Company's bankruptcy assets that have been declared bankrupt are in a state of Insolvency as stipulated in the Insolvency Law and Postponement of Debt Payment Obligations; or
  - f. Due to the revocation of the Company's usah license, it requires the company to liquidate.
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#### 5. The Role of Individual Companies as a New Choice for MSMEs

The role of an individual company is actually the same as an individual company, especially in Indonesia, individual companies become part of MSMEs in accordance with the writing of the definition of individual companies and individual companies where there is a diction as part of Micro, Small and Medium Enterprises. The role of MSMEs themselves include::(*Kontribusi UMKM Dalam Roda Perekonomian Indonesia*, n.d.)

- a. The role of MSMEs is important as a means of surprising small communities from the abyss of poverty. Due to the high rate of employment by MSMEs. this is proven in data belonging to the Ministry of Cooperatives and MSMEs that from the productive sector MSMEs can employ more than 107.6 million Indonesians and contribute 60.6 percent to Indonesia's GDP.
- b. MSMEs also have an important role in the economic equality of the community. Unlike large companies, MSMEs have locations in various places in Indonesia. That way, it can reduce the economic gap between the underprivileged and underprivileged people. In addition, it makes the villagers not flock to go to the city in the hope of getting a good quality of life.
- c. Providing income for the country in the form of foreign exchange. Currently, MSMEs, especially in Indonesia, are very developed, the market is not only national but also international.
- d. In addition, it was also explained that individual companies are a form of legality for Micro, Small Enterprises (MSEs) in order to support the National economic recovery (PEN) program that is currently happening.(*Pendirian Perseroan Perorangan Sebagai Kemudahan Berusaha Bagi Pelaku UMK*, n.d.)
- 6. The role of a Notary in the establishment of an individual company

In fact, in the Establishment of an Individual Company, there is no notary involvement in it. This was emphasized and explained by the Minister of Law and Human Rights, Yasonna Laoly in her speech explaining that an individual company entity can be established simply by filling out the establishment statement form that has been facilitated by the government electronically so that there is no need for a notarial deed in its establishment.(*UU Cipta Kerja Mungkinkan PT Didirikan Tanpa Akta Notaris, Menkumhan: Ini Komitmen Pemerintah Wujudkan Kemudahan Berusaha*, n.d.)

In addition, he also emphasized that although in the establishment of an individual company without the need for a notarial deed, I hope that the notaries are still willing to be a place to consult and help those who will establish individual companies electronically. This is in accordance with Article 15 paragraph (2) letter e of Law Number 2 of 2014 concerning Amendments to Law Number

30 of 2004 concerning the Position of Notary which explains that the Notary is also Authorized to provide legal counseling in connection with the making of the Deed.

However, the role of a Notary is very important for the formation of an ordinary PT or capital partnership PT. An individual company can turn into a Capital Partnership if the shareholders become more than 1 person; and/or Does not meet the criteria for MSEs as stipulated in the provisions of laws and regulations. Therefore, if an individual company does the two things above, its status can change to a capital partnership PT where the role of a notary is more tangible because the formation of this status must be through a Notarial Deed, this is in accordance with Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies.

#### IV. CONCLUSION

Based on the analysis and presentation that has been described above, the conclusions that can be drawn are as follows:

1. Individual companies for now can be a consideration of the choice of business entities for entrepreneurs, especially for Micro and Small scale entrepreneurs and for individual companies that are carrying out their activities by changing the form of their business entities into individual companies can be considered a safe choice because they can get clearer legal protection as a legal entity both in terms of responsibility and also a more separation of company assets safe.
2. With the above, the author hopes that individual company R can change the form of its business entity to an individual company because with the form of a company that is an individual company, it would be better if an individual company became an option to strengthen the growing business. However, due to a misconception in the practice of the R company itself because an individual company should not adhere to a partnership system with its workforce. But it should be subordinate superiors, if they want to continue to adhere to the profit-sharing system, the choice of the form of a civil partnership business entity or CV can be the right choice option for the company. However, the author again emphasizes that the owner of an individual company R can choose various forms of business entities in the hope that it can help develop the company.
3. A notary as a general officer does not have any authority in the process of establishing an individual company, but can provide legal counsel to the founder of the company with all considerations of the current form of business entity. However, notaries clearly have the authority to make authentic deeds for limited liability companies / capital companies because it is already one part of the duties that have been stated in the Limited Liability Company Law. Therefore, for individual companies that are interested in converting their business entities into capital companies or individual companies that no longer meet the requirements to become individual companies, they can ask a notary for help because the notary is an official who is entitled to issue the deed of establishment.

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