

ANALYSIS OF LIMITED LIABILITY COMPANY SUPERVISION IN INDONESIA

Ria Veronica, Jeane Neltje Saly

Universitas Tarumanagara, Indonesia

Email: ria.217221069@stu.untar.ac.id, jeanes@fh.untar.ac.id

Abstract

This article discusses the supervision of Limited Liability Companies (PT) in Indonesia. PT is a legal entity established through an agreement and conducts business activities with divided capital in the form of shares. The article explains that supervision is carried out to ensure that PT operates in accordance with applicable laws and regulations. PT has characteristics such as separation between the company and its owners, the ability to sue and be sued on behalf of the company, and the right of shareholders to file lawsuits related to ultra vires acts. The article also explains that the requirements for establishing PT in Indonesia have undergone changes, where now PT can be established by one person and can also be operated by one person. The establishment of PT involves providing information such as the company's name, registered address, duration of establishment, purpose and objectives, business activities, capital, shareholders, and founder's data. PT must obtain legal status from the Ministry of Law and Human Rights to be recognized as a legal entity. Failure to obtain approval from the Ministry will result in PT being treated as a partnership or non-legal entity. The Ministry of Law and Human Rights has the authority to revoke the license of PT. Financial and tax supervision of PT is the responsibility of the Ministry of Finance. If the license of PT needs to be revoked, it must go through the Ministry of Law and Human Rights.

Keywords: Limited Liability Companies, Regulatory Institutions for Limited Liability Companies, and Indonesia.

INTRODUCTION

Indonesia is a country that has a *civil law* legal system. The *civil law* legal system itself is a legal system adopted by Continental Western European states and then applied to all former colonies of western colonial governments, one example of which is Indonesia (Hardini, 2016; Huda & SH, 2020). The civil law legal system has 3 (three) characteristics, namely codification, judges who are independent so that they are not bound by the president, the main source of law in countries that adopt the *civil law* legal system is the Law. The following is the hierarchy of legal sources that apply in Indonesia:

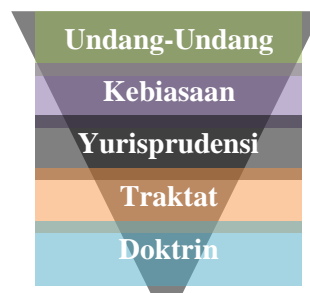


Figure 1. Hieraki Law

In this hierarchy, the Law is in the highest position, so that every thing in Indonesia has a Law. One example is Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as "Law No. 40 of 2007").

Law No. 40 of 2007 regulates related to limited liability companies in Indonesia, in the Law explains the procedures until the dissolution of a limited liability company in Indonesia. The background of the establishment of Law No. 40 of 2007 is due to demands from the public for the development of the business world in accordance with the principles of good corporate governance (Lany, 2015). Meanwhile, the purpose of the establishment of Law No. 40 of 2007 is to improve fast services and legal certainty (Indonesia, 2007).

The company itself originally came from an association (Handri Raharjo, 2012). In a broad sense, the company is an association that does not have elements of personality and has elements consisting of common interests, common will, common goals and cooperation (Handri Raharjo, 2012). The association itself is divided into two, namely legal entities and unincorporated.

Through the chart above, it can be seen that a company itself is divided into two, companies that run companies and companies that do not run companies (Chen et al., 2011). A company that runs its own company system is also divided into two, namely companies that are included as legal entities and companies that are not legal entities.

One of the incorporated companies is a limited liability company. Limited liability companies according to Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as "Law No. 40 of 2007") explain that the definition of a limited liability company itself is as follows (Pangestu & Aulia, 2017):

"A Limited Liability Company, hereinafter referred to as the Company, is a legal entity that is a capital partnership, established under an agreement, conducting business activities with authorized capital entirely divided into shares and meeting the requirements stipulated in this Law and its implementing regulations."

Meanwhile, according to Ahmad Yani and Gunawan Widjaja that the limited liability company itself is divided into 2 (two) words, between 'Company' and 'Limited', the company itself has the meaning of a paid-up capital in a limited liability company where there are shares and while limited is a limited shareholder's responsibility with the nominal shares owned by the shareholder (Kasih, 2022). A limited liability company is a company established with capital so that a limited liability company is established by at least 2 (two) people as shareholders or investors, a limited liability company is established based on a notarial deed made before a notary who has the authority to make notarial deeds related to the establishment of a limited liability company.

The establishment of a limited liability company initially has a minimum authorized capital of Rp. 50,000,000 (fifty million rupiah) and a minimum paid-up capital of 25% (twenty-five percent) of the authorized capital, these provisions are regulated in Article 32 paragraph (1) of Law No. 40 of 2007. However, at present, for the minimum authorized capital provisions depending on the agreement of the parties who want to establish a limited liability company, the authorized capital provisions regulated in Law No. 40 of 2007 are no longer the basis for determining the authorized capital of establishing a limited liability company. The establishment of a limited liability company initially consisted of 1 (one) director and 1 (one) person as commissioner. Limited liability companies in Indonesia have the following characteristics:

First, there is a separation between a limited liability company and its owner or also known as *separate and distinct from its owner* where a limited liability company can own assets in the name of the company, not requiring the owner's name to be the owner of the asset. These personality characteristics are regulated in Article 3 paragraph (1) of Law No. 40 of 2007 which reads as follows:

“The Company's shareholders are not personally responsible for the engagement made on behalf of the Company and are not responsible for the company's losses exceeding the shares owned.”

Limited liability companies do not need to bear rent to personal assets if there is a loss in the limited liability company, this is because there is a separation between the assets of the limited liability company and the personal property of the owner of the limited liability company, it is different from firms or all companies that are not legal entities, for example such as firms and CVs.

Second, it can sue and be sued on behalf of its own limited liability company. Article 98 paragraph (1) of Law No. 40 of 2007 states that:

“The Board of Directors represents the Company both in and out of court.”

If a limited liability company is sued, the directors have the authority to represent the limited liability company in attending hearings, not only in court proceedings, but outside the court also a limited liability company directors have the authority to act on behalf of the limited liability company. Limited liability companies also have the right to file a lawsuit against a third party if the third party is suspected of default or unlawful acts (Harahap, 2021).

Third, any shareholder can file a lawsuit against a limited liability company related to *ultra vires*. *Ultra vires* itself according to the *dictionary of English Law* is beyond the power, while according to *Yahya Harahap* *ultra vires* is *an action of directors that is not in accordance with their duties and responsibilities or beyond their control* (Harahap, 2021). Article 61 paragraph (1) of Law No. 40 of 2007 stipulates that:

“Every shareholder has the right to file a lawsuit against the Company to the District Court if they are aggrieved due to the Company's actions that are considered unfair and without reasonable reasons as a result of the decision of the GMS, Board of Directors, and/or Commissioners.”

Every country must have a state institution that supervises all activities of Limited Liability Companies. The supervision is carried out with the aim of ensuring that the Limited Liability Company runs in accordance with applicable laws and regulations. Therefore, researchers are interested in conducting this research with the formulation of the problem to be discussed, namely: "How is the supervision of Limited Liability Companies in Indonesia?"

METHOD RESEARCH

This study used a normative juridical type of research. According to Soerjono Soekanto, normative juridical research is research conducted using secondary data materials as a fulcrum or research foundation, the secondary data in question includes laws and regulations, draft laws, previous research results (Soekanto & Mamudji, 2015).

RESULT AND DISCUSSION

The establishment of a Limited Liability Company in Indonesia was initially established by a minimum of 2 people, these requirements are regulated in Article 153A paragraph (1) of Law No. 40 of 2007 into Article 109 paragraph (5) of Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation into Law (hereinafter referred to as the "Job Creation Law"). Article 109 paragraph (5) of the Job Creation Law stipulates that:

“Companies that meet the criteria for micro and small enterprises can be established by 1 (one) person.”

The purpose of changes related to the requirements for establishing a Limited Liability Company in Indonesia is to improve the ease of doing business in Indonesia. The enactment of the Job Creation Law so that the requirements for registering or establishing a Limited Liability Company in Indonesia can be capitalized by 1 (one) person and run also by 1 (one) person or also known as Individual Limited Liability Company (Aziz & Febriananingsih, 2020).

The establishment of a Limited Liability Company by 1 (one) person can basically result in non-fulfillment of Law No. 40 of 2007, namely the element of establishment of a Limited Liability Company must be established by at least 2 (two) people who make an agreement, the elements that are violated are the element of partnership in the principle of capital partnership and the element of agreement in the principle of being established based on an agreement (Putri, 2020). Before the enactment of the Job Creation Law, Limited Liability Companies in Indonesia were only known in one form, unlike the current existence of Individual Limited Liability Companies.

The establishment of an Individual Limited Liability Company has been regulated in Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Change and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises (hereinafter referred to as "PP No. 8 of 2021"). Article 1 paragraph (2) of PP No. 8 of 2021 confirms that the statement of establishment is a format for the establishment of an Individual Limited Liability Company which is carried out electronically so that it is stated that it does not require a notarial deed in establishing an Individual Limited Liability Company (Jaya, 2021). A Limited Liability Company can be established by Indonesian citizens who are at least 17 (seventeen) years old and legally capable.

The establishment of a Limited Liability Company electronically contains a filling format in the form of information about the name and place of residence of the Limited Liability Company, the period of establishment of the company, the aims and objectives and business activities of the company, the amount of authorized capital, issued capital, paid-up capital, nominal value and number of shares, company address and founder data (Aspan, 2017). The founder's data itself contains the full name, place of birth, occupation, place of residence, residence number and Taxpayer Identification Number of the founder as well as the director and shareholder of the Individual Limited Liability Company. The registration of the Individual Limited Liability Company will get an endorsement or status as a legal entity from the Ministry of Law and Human Rights.

A Limited Liability Company if it has not received approval from the Ministry of Law and Human Rights, then the Limited Liability Company cannot be classified as a legal entity,

so that all its responsibilities and obligations are equated with a partnership of firms or non-legal entities, it is regulated in Article 7 paragraph (2) of Law No. 40 of 2007. If a Limited Liability Company is established without a submission in the form of an application for ratification to the Ministry of Law and Human Rights, then within 60 (sixty) days from the establishment of the Limited Liability Company can be declared dissolved by law (Wiranti, 2019). In Law No. 40 of 2007 confirms that Article 4 regulates the establishment of a Limited Liability Company regulated and examined by the Ministry of Law and Human Rights, Article 5 confirms related to the requirements and procedures for the establishment of a Limited Liability Company, including also the requirements for the establishment of a certificate of establishment authorized by a notary or known as a notarial deed then must obtain approval from the Ministry of Law and Human Rights, Article 29 states that changes to the Articles of Association of a Limited Liability Company must obtain approval from the Ministry of Law and Human Rights, and Article 95 states that the revocation of a Limited Liability Company's license can only be carried out by the Ministry of Law and Human Rights.

Law No. 40 of 2007 can be seen that the Ministry of Law and Human Rights in Indonesia has a role in supervising and regulating Limited Liability Companies. So that all activities of the Limited Liability Company starting from establishment, regulation of changes, revocation of licenses, supervision and guidance and additional must go through the Ministry of Law and Human Rights. One of the authorities of the Ministry of Law and Human Rights is to have the authority to revoke the license of a Limited Liability Company.

Supervision of finances and tax-related policies in Limited Liability Companies in Indonesia is the authority of the Ministry of Finance, so that a Limited Liability Company that has financial or tax problems, the Ministry of Finance only has a role or authority as law enforcement in solving these problems. The Ministry of Finance does not have the authority to revoke the Limited Liability Company's license. If the license from the Limited Liability Company must be revoked, the Ministry of Finance must go through the Ministry of Law and Human Rights.

All applicable legal rules must be in accordance with the theory of expediency. The theory of expediency itself according to Gustav Radbruch is divided into 3 goals, expediency, certainty and justice (Nahak, 2023). The highest position is in justice, then the second is expediency and finally legal certainty. Justice is the first and most important legal basis in the formation of a law in Indonesia. Justice is used as a foundation and benchmark for a positive system inherent in community life. Expediency itself is the most difficult thing to assess or determine related to a policy that has an impact or not on community life. Legal certainty according to Utrecht is a law enacted to ensure legal certainty.

The existence of a state institution that oversees the activities of a Limited Liability Company, certainly fulfills the theory of legal objectives in the form of benefits. Where supervision can provide good benefits for the Indonesian people as entrepreneurs and as consumers. with supervision, it is expected to eradicate limited companies that are not in accordance with applicable law.

CONCLUSION

Based on the research conducted, it can be concluded that limited liability companies in Indonesia are regulated by Law No. 40 of 2007. This law was formed to meet public demands for business development in accordance with the principles of *good corporate governance and* to improve fast services and legal certainty. The establishment of a limited liability company in Indonesia initially had to be done by a minimum of 2 people, but in the Job Creation Law, this requirement changed to a minimum of 1 person. A limited liability company also has the obligation to apply for ratification to the Ministry of Law and Human Rights, otherwise the limited liability company can be declared dissolved by law. Supervision of limited liability companies is carried out by state institutions with the aim of ensuring that limited liability companies run in accordance with applicable laws and regulations. This supervision is important to maintain fairness and sustainability in the activities of limited liability companies.

In the event of a lawsuit, every shareholder has the right to file a lawsuit against the limited liability company if they feel aggrieved by the company's actions that are considered unfair and without reasonable reasons. Limited liability companies also have the right to sue third parties who are suspected of default or unlawful acts. Thus, supervision of limited liability companies in Indonesia is important to maintain fairness and sustainability in the business world, as well as provide legal certainty for all parties involved.

REFERENCES

- Aspan, H. (2017). Good Corporate Governance Principles In The Management Of Limited Liability Company. *International Journal Of Law Reconstruction*, 1(1), 87.
- Aziz, M. F., & Febriananingsih, N. (2020). Mewujudkan Perseroan Terbatas (Pt) Perseorangan Bagi Usaha Mikro Kecil (Umk) Melalui Rancangan Undang-Undang Tentang Cipta Kerja. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(1), 91.
- Chen, W. L., Xie, S. Q. S., Zeng, F. F., & Li, B. M. (2011). A New Process Knowledge Representation Approach Using Parameter Flow Chart. *Computers In Industry*, 62(1), 9–22.
- Handri Raharjo, S. H. (2012). *Hukum Perusahaan*. Mediapressindo.
- Harahap, Y. (2021). *Hukum Perseroan Terbatas*. Sinar Grafika (Bumi Aksara).
- Hardini, S. (2016). Introduction To The Law Of Indonesia. *Anthropos: Jurnal Antropologi Sosial Dan Budaya (Journal Of Social And Cultural Anthropology)*, 2(1), 91–100.
- Huda, H. M., & Sh, M. (2020). *Perbandingan Sistem Hukum*. Cv Cendekia Press.
- Indonesia, R. (2007). *Undang-Undang Republik Indonesia Nomor 40 Tahun 2007 Tentang Perseroan Terbatas*. Jakarta: Sekretariat Negara.
- Jaya, F. (2021). Potensi Konflik Kepentingan Dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas Dalam Omnibus Law. *Kosmik Hukum*, 21(2), 115–123.
- Kasih, D. P. D. (2022). Perseroan Perorangan Pasca Uu Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal. *Arena Hukum*, 15(1), 20–37.
- Lany, A. (2015). Kepastian Dan Perlindungan Hukum Dalam Pendirian Perseroan Terbatas Melalui Sistem Administrasi Badan Hukum Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas. *Padjadjaran Jurnal Ilmu Hukum (Journal Of Law)*, 2(2).
- Nahak, A. (2023). Problematika Eksekusi Putusan Pengadilan Tata Usaha Negara Dalam Perspektif Hukum Gustav Radbruch. *Jurnal Pendidikan Sosial Dan Humaniora*, 2(3).
- Pangestu, M. T., & Aulia, N. (2017). *Hukum Perseroan Terbatas Dan Perkembangannya Di*

- Indonesia. *Business Law Review*, 1(03).
- Putri, A. A. (2020). Analisis Konflik Hukum Dan Simulasi Pernyataan Pendirian Perseroan Terbatas Oleh Pendiri Tunggal. *Indonesian Notary*, 3(1), 2.
- Soekanto, S., & Mamudji, S. (2015). Penelitian Hukum Normatif Suatu Tinjauan Singkat Cet Xvii. Rajawali Pers, Jakarta.
- Wiranti, I. S. (2019). Kedudukan Hukum Perseroan Terbatas Setelah Surat Keputusan Pengesahan Pendiriannya Dicabut. *Jurtama*, 1(2), 112–127.

Copyright holders:
Ria Veronica, Jeane Neltje Saly (2023)
First publication right:
Injurity - Interdisciplinary Journal and Humanity



This article is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International](https://creativecommons.org/licenses/by-sa/4.0/)