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**INDONESIA'S NATIONAL ECONOMIC RECOVERY
THROUGH THE CONVENIENCE OF COMPANIES
ESTABLISHING OF MICRO AND SMALL ENTERPRISES
IN THE JOB CREATION ACT**

Putu Ayu Sriasih Wesna*
Warmadewa University, Denpasar-Bali, Indonesia
e-mail: ayuwesna@gmail.com
*Correspondence: ayuwesna@gmail.com

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Indonesia's National Economic Recovery Through the Convenience of Companies Establishing of Micro and Small Enterprises in the Job Creation Act

by Putu Ayu Sriasih Wesna

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Putu Ayu Sriasih Wesna*

Warmadewa University, Denpasar-Bali, Indonesia

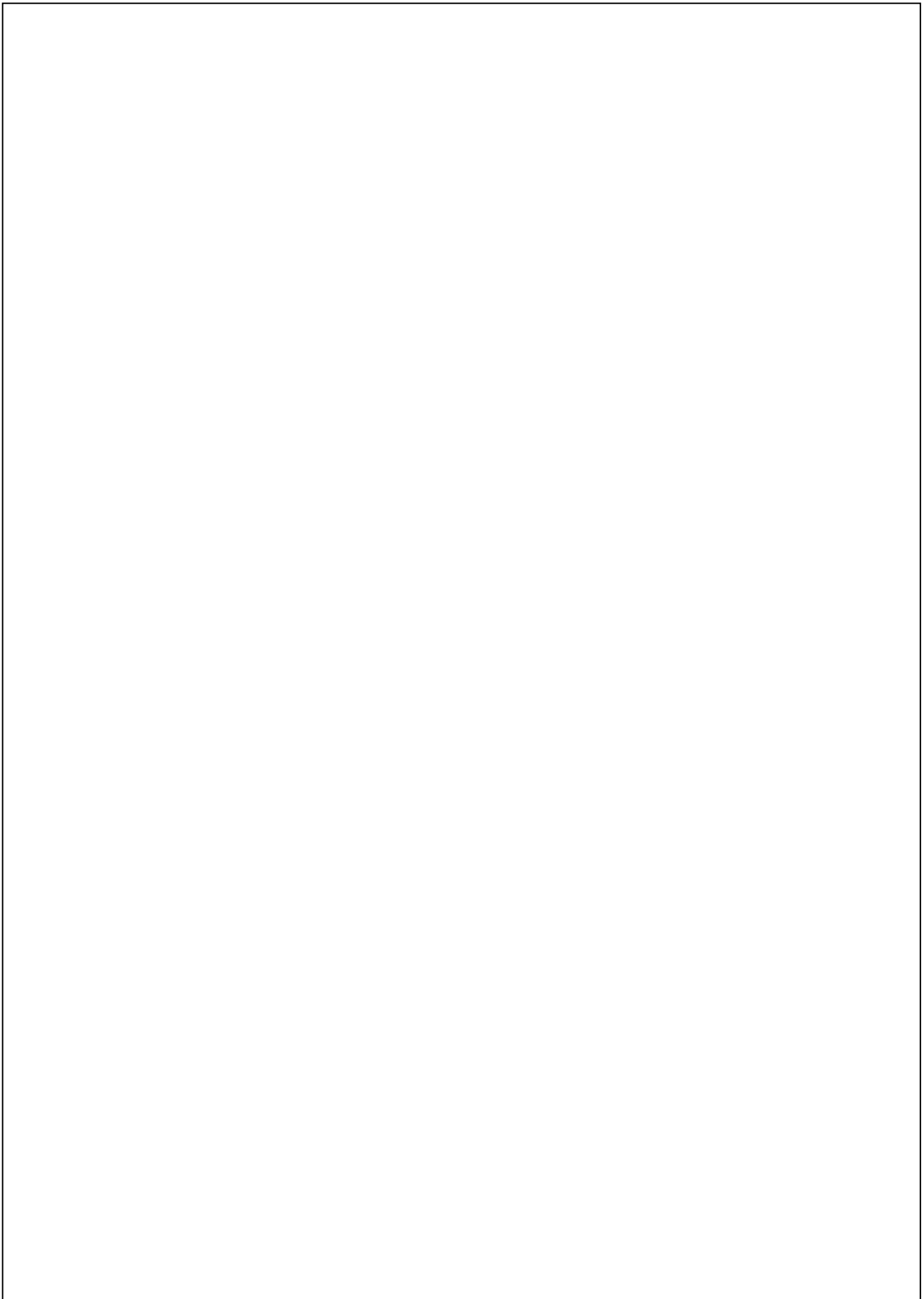
e-mail: ayuwesna@gmail.com

*Correspondence: ayuwesna@gmail.com

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INTRODUCTION

The Indonesian government has taken various ways to empower micro-enterprises to help people who have experienced layoffs (PHK) and lost income because their businesses have been affected by the Covid-19 pandemic (Meyer, Prescott, & Sheng, 2022); (Suwana, 2017). The government issued a policy to encourage the re-growth of micro and small enterprises. For micro-enterprises, the government, provides grants for start-up businesses, as well as adding funds of Revolving Fund Management Agency (referred as LPDB) of Cooperatives and MSME that can be used for low interest loans for MSMEs. The government also provides interest subsidies and facilitates credit or financing requirements and funding for MSMEs, including through the People's Business Credit (referred as KUR) (Amali & Pulukadang, 2018), as well as providing loan repayment relief for MSMEs.

To encourage community economic growth, the Government has enacted several policies and laws and regulations, one of which is Law Number 11 of 2020 concerning Job Creation. The National Economic Recovery Program (PEN) is one of a series of activities created by the Government to reduce the impact of Covid-19 on the economy (Bagchi, Chatterjee, Ghosh, & Dandapat, 2020).. In addition to focusing on handling the health crisis, the Government is also running the PEN program as a reaction to the decrease in the level of community activity affected by Covid 19, especially the informal sector and MSMEs (Koloma, 2021).

The Job Creation Act is promulgated

with the hope that there will be job creation in accordance with the objectives set out in Article 3 letter a of the Job Creation Act. Creating and increasing job opportunities by providing financing facilities for MSMEs as well as national industry and trade. It is also hoped that this promulgation is an effort to be able to absorb the widest possible Indonesian workforce while still paying attention to the balance and progress between regions according to the characteristics of each region. The Job Creation Act was promulgated with the hope of creating a new form of business entity, in this case a legal entity other than an existing legal entity, in order to increase economic growth, namely to form an individual company that can be established with individuals. An individual company as referred to in the Job Creation Act provides facilities and conveniences for the community in its establishment because it does not require a notary deed and it is enough just to make a statement as regulated in government regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Changes, and the dissolution of a Company that meets the Micro and Small Business Criteria (Fianto, Gan, Hu, & Roudaki, 2018).

METHODS

This research is conducted using two types of approaches: a statutory approach and an analytical approach. A normative juridical analysis generally places more emphasis on the deductive method as the main basis and the inductive method as the supporting work procedure. The analysis of

legal materials in this study includes descriptive analysis, which is descriptive, comparative, evaluative, and argumentative (Diantha, 2016). The technique used in this research is a systematic and interpretive descriptive-analytical technique, which describes the shortcomings and advantages of a legal product under analysis, as well as trying to find the relationship between the formulation of a legal concept or legal proposition between articles contained in the same legal product

RESULTS AND DISCUSSION

Form of Business Entity in Indonesia

The term "company" is a term that replaces the term "trader" as regulated in Articles 2 to 5 of the old. The term company which replaces the term merchant has a broader meaning. Many people used to run companies in the sense according to S. 1938 No. 276, but not included in the definition of a trader according to Article 2 of the KUHD.

According to the legislators, a company is an act that is carried out uninterruptedly, openly, in a certain position and to seek profit (Pratama, Marsuni, & Ilyas, 2021). Activities carried out with the intention of making a profit include economic activities. The formulations of the company definition above are strengthened by many experts in the field of Commercial Law or Business Law, such as Sri Redjeki Hartono who stated that economic activity is essentially an activity of running a company, which is an activity that implies that the activity in question must be carried out (Nerio, Olivero-Verbel, & Stashenko, 2010).

- a. Continuously in the sense of uninterrupted;
- b. Openly in the sense of legal (not illegal); and
- c. These activities are carried out in order to gain profit, either for themselves or for others.

There are various types of business entities in Indonesia. Business entities are divided into two broad categories, namely business entities that are legal entities and business entities that are not legal entities. Business entities that are not legal entities consist of Firm Partnerships (Cheshire, 2010), Limited Partnerships (CV), Private Company, and Trading Businesses (referred as UD). The business entities that are legal entities are Limited Liability Companies (PT) and Cooperatives. This type of business entity in the legal system in Indonesia has more strict regulations with separate laws and regulations for each type of legal entity.

Regulations regarding legal entities are also regulated in the Civil Code. Basically, Burgerlijk Wetboek (BW) does not regulate the term legal entity. The term used according to BW is Zedelijk Lichaam. According to BW or the Civil Code, what is meant by a legal entity or rechtspersoon is a group of people who in legal traffic act as if they are a single private entity or corporation.

A partnership company can take the form of a partnership or an entity that is not a legal entity and a partnership/entity that is a legal entity (Le Feuvre, Medway, Warnaby, Ward, & Goatman, 2016). A partnership company that is not a legal entity is basically a company established and owned by a private party. A partnership

company that is not a legal entity is a company in the form of a partnership or a partnership that is carried out and owned by two or more people, which can be in the form of a Civil Partnership, Firm Partnership (Fa) and Limited Partnership (Commanditaire Vennootschaap abbreviated CV). A partnership company that is a legal entity is a partnership or entity that can become a legal subject, namely everything that can carry rights and obligations. Things that can become legal subjects are humans (natuurlijkpersoon) and legal entities (rechts-persoon) (Noor, 2014).

Limited Liability Company (PT) is an association or entity consisting of several shareholders and has separate capital from the assets of the owner or founder with company assets, this company is established based on an agreement and carries out business activities with authorized capital which is entirely divided into shares and as complied with the requirements stipulated by law. The normative setting of the term Limited Liability Company (PT) can be found in Law Number 40 of 2007 concerning Limited Liability Companies (PT), precisely in Article 1 paragraph (1), which states:

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

From the formulation described above, the criteria can be given that a Limited Liability Company (PT) is a legal entity

established on the basis of an agreement and has separate assets from assets and its capital consists of shares so that the liability of shareholders is limited to a number of shares they have put.

According to Satjipto Rahardjo, a legal entity as a legal subject is the result of a fictitious construction of a law which is then accepted, treated and protected just as the law provides protection for humans. According to (Nam, 2020) legal doctrine, an entity will be a legal entity if it meets the following criteria or conditions:

- 1) There is a separate wealth
- 2) Have a specific purpose
- 3) Have their own interests, and
- 4) There is an organized organization.

Limited Liability Company (PT), also known as Naamloze Vennootschaap (NV), is a partnership to run a business whose capital consists of shares, the owner of which has as many shares as the shares it owns. Because the capital consists of shares that can be traded, changes in company ownership can be made without the need to dissolve the company. A limited liability company is a forum for conducting business activities (Al Mubarak & Busler, 2011), which limits the liability of the capital owner, which is the number of shares owned. so that this form of business is widely enjoyed, especially for companies with large amounts of capital. Ease of attracting funds from the public by selling shares which is also an impetus to establish a business entity in the form of a limited liability company (Badriyah Rifai Amirudin, Arti Pendidikan Network).

The form of a limited liability company is in great demand by the public because in general a limited liability company has the

ability to develop itself, is able to capitalize on capital and is a potential vehicle for profit both for the institution itself and for its supporters (shareholders) (Supriyatin & Herlina, 2020).

Of all business entities in Indonesia such as Firms (Fa), Limited Partnerships (CV), Cooperatives and so on, Limited Liability Companies, hereinafter referred to as Companies, are a form of business entity with economic activity that receives the highest portion of attention. Limited Liability Company (PT) is the most preferred form of economic activity at this time, in addition to the limited liability, limited liability companies also provide convenience for the owners (shareholders) to transfer the company (to everyone) by selling all the shares they own at the company.

In principle, the establishment of a Limited Liability Company Based on Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law), the establishment of a Limited Liability Company (PT) must be made up of 2 (two) or more persons. in the form of an authentic deed in this case a notarial deed. Furthermore, in Articles 32 and 33 of Law Number 40 of 2007 concerning Limited Liability Companies. The establishment of limited liability company must have authorized capital, issued capital and paid-up capital contained in the articles of statute which must be approved by the Minister of Law and Human Rights. This business entity in the form of a legal entity has a distinctive character, namely the name of the Limited Liability Company (PT) may not be the same

as or similar to other companies or the same as the names of other well-known companies, if the names are the same, the approval will be rejected by the Minister. Law and Human Rights. If the limited liability company has not yet obtained the status of a legal entity, then all the companies, both founders, directors and commissioners, are jointly and severally responsible for a legal act and losses suffered by the company.

Ease of Establishing Micro and Small Business Individual Companies in Supporting National Economic Recovery

Article 109 of Law Number 11 of 2020 concerning Job Creation which changes several provisions in the Limited Liability Company Law. One of the changes is regarding the Company's capital. Before being amended, Article 32 of the Limited Liability Company Law regulates the minimum authorized capital of the company, namely Rp. 50,000,000, fifty million rupiah) with a minimum of twenty five percent of the authorized capital must be issued and paid up as evidenced by a valid proof of deposit. Meanwhile, after the enactment of the Job Creation Act, it was changed so that PT must have authorized capital. The amount of authorized capital is determined based on the decision of the founder of PT. Basically there is no minimum stipulation for the authorized capital of PT, and the amount of the authorized capital is left entirely to the agreement of the founders of PT. Furthermore, the Job Creation Act also changes the provisions regarding the conditions for establishment of a PT, which initially the establishment of a PT

must be established by at least two people based on an agreement by making an authentic deed, but in the Job Creation Act it changes this which is between Articles 153 and 154 inserted again one Article, namely Article 153⁶ A. The article stipulates that a Company that meets the criteria for Micro and Small Business can be established by one person. The establishment of a company/PT that meets these criteria can be carried out without a notarial deed, that is, it can be established based on a statement of establishment made in Indonesian.

In the implementing regulations, which are regulated in Government Regulation Number 8 of 2021 concerning Authorized Capital of Companies and registration of the Establishment, Change and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, the government has provided convenience for micro and small entrepreneurs to establish companies that are legal entities, in this is called a sole proprietorship. In this case, those included in the category of micro and small businesses are:

²⁹ **Micro business**

Productive businesses owned by individuals and/or individual business entities¹⁵, which have a business capital of up to a maximum of Rp. 1,000,000,000 (one billion rupiah), this does not include land and buildings for business premises, or annual sales proceeds of up to a maximum of Rp. 2,000,000,000,- (two billion rupiah).

Small business

As for what is referred to a small business, namely the first productive

economic business that stands alone, established by an individual or business entity that is not a subsidiary or not a branch of a company that is owned, controlled, or becomes a part, either directly or indirectly, of a medium or large business. . Second, having a business capital of more than Rp. 1,000,000,000 (one billion rupiah) up to a maximum of Rp. 5,000,000,000 (five billion rupiah). This does not include land and buildings for business premises. Third, annual sales of more than IDR 2,000,000,000 (two billion rupiah) up to a maximum of IDR 15,000,000 (fifteen billion rupiah).

Business actors who meet the above criteria can establish an individual company with the following facilities:

1. Can be founded by 1 person.
2. An individual company can be established by an Indonesian citizen ("WNI") who is at least 17 years old and legally competent.
3. Elimination of costs for establishing a legal entity.
4. Ease in the Procedure for the Establishment of an Individual Company.
5. The establishment of an individual company is sufficient to make a statement of establishment in Indonesian language, which contains the aims and objectives, business activities, authorized capital, and other information related to the establishment of an individual company.
6. The statement of establishment is registered electronically to the Minister of Law and Human Rights by filling in the form.

7. With respect to the registration of the statement of establishment, the Minister shall then issue a certificate of statement of establishment electronically.
8. The founder of an individual company as the applicant can print the statement of the individual company and the certificate of the statement of establishment using white paper size F4/folio.

The Individual Company established by one person must change its legal entity status to a Limited Liability Company if it meets the following criteria:

- a. shareholder becomes more than 1 (one) person: and/or
- b. does not meet the criteria for micro and small businesses as regulated in the provisions of the legislation regarding micro and small businesses.
- c. An individual company before becoming a company is required to change its status through a notarial deed and be registered electronically with the Minister.
- d. The change in status is carried out in accordance with the provisions of the legislation regarding the Company, in this case PT.

Individual companies, although they can be established by one person as an effort by the government to facilitate the process of establishing a PT, are the same as PT Shares of individual companies that meet the UMK criteria, the number cannot be single, but there must be more than one. Because the principle of the PT remains as a capital partnership. The number of shares of more than one is also useful when the UMK Individual Company turns into a PT

which is regulated by the Limited Liability Company Law.

The organs in individual companies contained in the Job Creation Act adhere to the concept of a one-tier system, in which the company is run by one organ, namely the board of directors (board of directors). In this case, the Director also carries out the functions of management and supervision. Whereas in a two-tier system, there is an organ that performs the function of managing the company, namely the board of directors and there is an organ that performs a supervisory function (board of commissioners), as adopted by the Company Law. Even though an individual company adheres to a one-tier system, it is possible to appoint a commissioner as the company's supervisor if needed. In an individual company, an individual who meets the UMK criteria whose shareholder is only one person, still has the GMS organ.

CONCLUSIONS

Based on the definitions of the one-tier system and the two-tier system, if it is related to the Limited Liability Company Law prior to the enactment of the Job Creation Act, then Indonesia uses the principle of a two-tier system. This is because in Indonesia the functions of company management and supervision are separated, which so far are known as the Board of Directors and the Board of Commissioners. In this case, the Board of Directors is more authorized to carry out the management of the company, while the Board of Commissioners is more responsible for supervising. Although there is only one shareholder in the job creation

law, shareholders can appoint other organs as supervisory organs or commissioners, or shareholders can act as management organs or supervisory organs.

The enactment of the Job Creation Act is expected to be a breakthrough for the Government in cutting the length of regulations in the establishment of limited liability companies. Besides being expected to improve the welfare of the community, the Job Creation Act is believed to be able to accelerate economic recovery. All these facilities can be accessed by the public, starting from the Micro, Small and Medium Enterprises (MSME) and Cooperatives sector. The job creation law will also make it easier for micro and small business actors (UMK) to speed up the licensing process by registering online single submission (OSS), because individual companies only need to register an individual company to get an individual company registration certificate to be called a legal entity.

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