

SINGLE-MEMBER COMPANY AS A LEGAL ENTITY AND ITS CORRELATION WITH THE ESTABLISHMENT OF A COMPLETELY SOLE-OWNED LIMITED LIABILITY COMPANY BASED ON REGULATION NUMBER 40/2007 REGARDING LIMITED LIABILITY COMPANY IN INDONESIA

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Abstract

This Article aims to discuss concerning Single-Member Private Company as a Legal Entity and its Correlation with the establishment of a completely self-owned limited liability company based on the Limited Liability Company Act No. 40/2007 in Indonesia. This study mainly discuss the problem concerning Implication of Legal Entity concept which applied on Single-Member Private Limited Liability Company in Indonesia towards Fully Self-owned Limited Liability company based on Regulation Number 40/2007 regarding Limited Liability Company in Indonesia. This study used the normative-juridical method, where the data used prioritizes library research. The results of the research regarding the problem discussed in this study are that there are several issues related to Single-Member Private Company as a Legal Entity and its Correlation with the Establishment of a Completely Self-owned Limited Liability Company based on Regulation Number 40/2007. First, Indonesia Regulation Number 40/2007 adopts the principle of Limited Liability Company must be established based on an agreement by more than one person, however with regard to the concept of an Individual Company as a Legal Entity and through the implementation of Government Regulation 8/2021, the establishment of a Completely Sole-owned Limited Liability Company is fully possible, either directly in the case of a Single-Member Private Company on a Micro and Small Business scale (MSEs), or indirectly on a Medium and Large Business Scale (Non-MSEs), where the Completely Single-Owned Limited Liability Company is carried out by the Establishment by a Single-Member Private Company together with the Founder of the Single-Member Private Company itself. Second, regarding the effectiveness of the Government Regulation 8/2021 especially article 9 paragraph 1b which limits Single-Member Private companies to only micro and small enterprises (MSEs). These problems occur due to the absence of prohibitions on the use of single-member private companies in the Establishment of Limited Liability Companies in Indonesia, and also because of the principle of Limited Liability Companies must be established based on agreements itself. With the application of the concept of an Individual Company as a Legal Entity in Indonesia, the Possibility of Completely Single Incorporator / Completely single-owned on Limited Liability Companies in Indonesia is fully opened. Both, whether

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its Micro and Small Business (MSEs) scale or Medium and Large Business (Non-MSEs). In order to avoid ambiguity, it is better to give a firm regulation regarding the prohibition or the permissibility of the Completely Single-Owned Limited Liability Company in Indonesia.

Keywords: Limited Liability Company; Single-Member Private Company; Single Incorporator; Legal Entity.

Introduction

In Indonesia, the definition of Limited Liability Company means “a legal entity constitutes a capital alliance, established based on an agreement, in order to conduct business activities with the Company’s Authorized Capital divided into shares and which satisfies the requirements as stipulated in this Law, and its implementation regulations.”. Whereas, the definition of Limited Liability Company has been amended after the implementation of Omnibus Law No. 11/2020 with the additional phrase of “... or Single-Member Legal Entity which fulfilled the criteria of Micro and small enterprises as regulated in the law concerning Micro and Small Enterprises”. Limited Liability Company as a Legal Entity has its own characteristic that the Limited Liability Company must be seen by law as a separate entity differs from its owners (Harahap, 2016). However, in 2020 Indonesia Government created law concerning Job Creation which is the “Omnibus Law 11/2020” and its implementing regulations such as Government Regulation number 8/2021 concerning “Company's Authorized Capital and the Registration of Establishment, Change, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses.” Before the implementation of Omnibus Law 11/2020 and Government Regulation number 8/2021, The Establishment of a Limited Liability Company in Indonesia is based on the Law 40/2007. Based on Law 40/2007 regulation, a Limited Liability Company must be established by 2 (two) person or more with a notarial deed in Indonesian language, as regulated in article 7 paragraph 1 Law 40/2007. Therefore, if someone wants to establish a Limited Liability Company in Indonesia, they must have a business partner as another shareholder at least as the owner of 1 (one) share in the company concerned, except in certain cases (for example: the establishment of State-Owned Enterprises whose shares can be fully owned by the state, and so on).

According to the data collected by the Indonesia Ministry of Cooperatives and Small and Medium Enterprises (KemenkopUKM) in March 2021, the number of MSMEs reached 64.2 million with a contribution to Gross Domestic Product of 61.07 percent or Rp. 8,573.89 trillion. MSMEs are able to absorb 97 percent of the total workforce, and can collect up to 60.42 percent of total investment in Indonesia. So considering the large number of MSMEs in Indonesia and their contribution to the country's economy, it is not surprising that the Government continues to strive to support MSMEs from various aspects, one of which is the permitment and licensing aspects.

As one attempt to simplify business permits and licensing, through the Job Creation Law, several articles have been amended from Law no. 40 of 2007 concerning Limited Liability Companies (“Law 40/2007”). Amendments to the Limited Liability Company Law through the Job Creation Law have provided a legal basis for the establishment of single-member legal entities that are specifically provided only for micro and small enterprises (MSEs). In the Job Creation Law, several provisions of the Limited Liability Company Law including the provision for the exception of the sole founder of a limited liability company in Article 7 paragraph (7) of the Limited Liability Company Law are extended to micro and small enterprises (MSEs). Then, the provisions related to individual companies are further regulated in Government Regulation number 8 of 2021 (GR 8/2021). The definition of a Limited Liability Company based on GR 8/2021 is “Limited Company, hereinafter referred to as a Company, is a legal entity constitutes a capital alliance, established based on an agreement, in order to conduct business activities with the Company’s Authorized Capital divided into shares or individual legal entities that meet the criteria for micro-enterprises and small businesses as regulated in the laws and regulations concerning micro and small businesses.”

This model of individual company has actually been known in several countries, including the United Kingdom (England) (Tessema, 2012), Singapore (Jianlin, 2008), German (since the 12th directive (Beurskens & Noack, 2008)), Italy (Guidotti, 2015), and even China (Miao, 2012), which is often known as the “Single-Member Private Limited Liability Company” / “Single-Member Company”. Meanwhile, in Indonesia, the concept of an individual company has just been implemented where the individual company application was launched on October 8, 2021 by the Directorate General of Legal Administration under the Ministry of Law and Human Rights. Related to the principle of a Limited Liability Company established must be based on an agreement, the implementation of individual companies itself is against the Indonesia law principle of a Limited Liability Company must established based on an agreement, which might cause problems related to ambiguity and legal certainty over the concept of establishing a limited liability company in Indonesia.

In connection with the matters described above, and considering that the launch of an individual company in Indonesia is classified as a new matter and there is no legal certainty regarding this matter, it is important to conduct research on Single-Member Companies as legal entities in Indonesia and its relation to the Establishment of a Limited Liability Company by a Completely Sole Owner based on the Law of the Republic of Indonesia Number 40 of 2007.

Method

This study uses a normative juridical approach, which is a research conducted by examining library materials or secondary data such as legislation, legal theory and the opinions of leading legal scholars (Soekanto, 2007). The research typology used in this research is descriptive-analytical research type. Means, that this study aims to

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accurately describe the nature of a particular individual, condition, symptom or group, or to determine the frequency of a phenomenon (Soerjono Soekanto dan Sri Mamudji, 2019). After that, which phenomenon will be analyzed in accordance with the laws and regulations and applicable legal principles. In this study, the phenomenon in question is regarding a Single-Member Company as a Legal Entity in Indonesia and its relation to the Establishment of a Limited Liability Company by a Completely Sole Proprietor based on the Law of the Republic of Indonesia Number 40 of 2007.

The types of data and data collection tools used in this study can be described as follows: Primary legal materials, including the Indonesia Civil Code (“KUHPer”) or Burgerlijk Wetboek (“BW”) and the Limited Liability Company Law (Law 40/2007), as well as other implementing regulations governing about Limited Liability Company. While the secondary legal materials used are library research using document studies on references relevant to the object of research obtained from laws and regulations, books, journals/scientific papers, news and articles. In essence, all informative documents or the results of studies on Civil Law especially in the field of Limited Liability Company Law, and so on related to it, which can be in the form of seminars or papers, newspapers, magazines, and also sources from related cyberspace pages. closely related to the problem that is the object of research.

The data collection tools used in this research are document studies and library research. Then, primary legal materials, secondary legal materials, and tertiary legal materials that have previously been systematically compiled will then be analyzed using qualitative methods. Qualitative means that data analysis is carried out starting from research on the principles or principles as regulated in the primary legal materials, and then it will be discussed further using secondary legal materials, which will be enriched as far as possible with the support of tertiary legal materials. Thus, it is hoped that from the results of the systematic analysis a conclusion can be drawn that can explain the relationship between the various types of existing materials, for the preparation of answers and suggestions for input on research problems described in a descriptive-analytic manner, which explains the Single-Member Company as a Legal Entity in Indonesia in relation to the Establishment of a Limited Liability Company by a Sole Proprietor based on the Law of the Republic of Indonesia Number 40 of 2007.

Result and Discussion

A. Result

1. Company as a Legal Entity in Indonesia

The concept of Company as an “artificial” (MC. Oliver and Marshal, 1991) Legal Entity (or “fictive” (Harry G. Henna, 1983) Legal Entity) which is separated from its owners is not a new concept. Otherwise, it's been known since a long time ago. Walter Woon in his book named “*Company Law*” said “... *a company has no body to be kicked, and no soul to be damned, no hands with which to work and no mind with which to think. It cannot act by itself. It must work through the medium of some human being* (Woon, 1998).” In principle, there is a “veil” or “curtain”

between the internal parties of a Limited Liability Company (in this case both shareholders and commissioners) and parties outside the Company, in which the curtain/veil can only be “raised.” if in certain cases the law can penetrate the personality of the company to individual members (Pickering, 1968). Furthermore, not only between its member but also between holding (parent company) and its subsidiary, as well as affiliate companies, the “separate entity” principle is always applied. In that case, so that each of the company has a separate Company capacity (Cox, 1997). The Company's debts are the responsibilities and obligations of the Company, in its own position and capacity as a legal entity or a separate legal entity (“separate entity”) and independent from the responsibilities of shareholders (Al., 1990). In fact, the model for establishing a single-member company like this has actually been known in several countries, such as the United States of America since 1960 (specifically for the Kentucky, Michigan, and Wisconsin regions), and was followed by other regions until in 1990 there were only 2 regions that did not apply the concept of establishing a company by a sole incorporator, which are Arizona and Utah (Buxbaum, 1990). However, each of the fifty states has amended their state limited liability company laws to permit the formation and operation of a single member limited liability company (Bishop, 2009).

The concept of a Limited Liability Company as a Legal Entity is surely also known in the positive law that applies in Indonesia, which is reflected in Article 1 paragraph 1 and Article 3 paragraph 1 of Law Number 40 of 2007 regarding Limited Liability Companies (“Law 40/2007”). The article defines a Limited Liability Company as follows: “A legal entity which is a capital partnership, established based on an agreement...” Where Article 3 paragraph 1 of the 2007 Company Law further stipulates that essentially the shareholders of the Company are not personally responsible for the engagements made on behalf of the Company and are not responsible for the loss of the Company exceeding the shares owned.

2. The Establishment of a Limited Liability Company is Based on an Agreement

A Limited Liability Company as a Legal Entity must be established based on the Agreement as referred to in Article 1 number 1 of the 2007 Company Law. Therefore, the establishment of the Company as a capital partnership between the founders must comply with the agreement/contract law regulated under the Indonesia Civil Code. Thus, the Company's Establishment is contractual and consensual. Therefore, and it is also emphasized in Article 27 of the 2007 Company Law, which agreement is carried out by at least 2 people, which can consist of an individual (“*naturlijke persoon*”) or a legal entity (“*rechts persoon*”). The existence of a Limited Liability Company as a legal entity can then be proven based on the Deed of Establishment which includes the Company's Articles of Association, which if the Articles of Association have been approved by the Minister of Law and Human Rights, the Company is legally a subject to corporation law, This is reflected in Article 7 paragraph (2) of the Law 40/2007 (Harahap, 2016).

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In addition, as a consequence of the contractual nature of the Establishment of a Limited Liability Company, Article 1320 of the Civil Code jo. 1338 of the Civil Code, regarding the conditions for the validity of the agreement so that the agreement is binding as law to those who make it, both objective conditions ("certain things" and "lawful causes") as well as subjective conditions ("capacity" and "consensus") must be fulfilled (Harahap, 2016). Therefore, the establishment of the Company is subject to the law of engagement or the law of agreement as regulated in Book III of the Civil Code which consists of: Part Two concerning General Provisions (articles 1313-1318); The second part is about the conditions for the validity of the agreement (Articles 1320-1337), and the third part is about the rules of agreement (Articles 1338-1341). That the establishment of the Company based on the Agreement as referred to in Article 7 paragraph (1) the second paragraph is an affirmation of the principles that apply to the 2007 Company Law. In essence, the Company as a legal entity was established based on an agreement and therefore has more than 1 shareholder (Harahap, 2016).

3. Provisions if the Company's Shareholders are less than 2 (two) shareholders Based on Law Number 40/2007 concerning Limited Liability Companies

After the Company has been ratified and obtained the status as a legal entity by the Minister, there are still chances that the Company will have less than 2 (two) shareholders. In such circumstances, the settlement is regulated in Article 7 paragraphs 5 and 6 of the Law 40/2007. Based on Article 7 paragraph 5 Law 40/2007, if the Company obtains the status of a legal entity and then its shareholders are reduced to less than two people, such condition could only be tolerated for a maximum period of 6 (six) months. During the period of 6 (six) months, the "single" shareholder as referred to in Article 7 paragraph 5 is obliged to take alternative actions, that is to say: He is obliged to transfer part of the shares he owns to another person, or he can issue new shares to another person.

If the sole shareholder is unable to fulfill one of these obligations, then based on Article 7 paragraph (6) of the 2007 Company Law, the legal consequence is that the sole shareholder concerned is personally responsible for all engagements and losses made and experienced by the Company, and the parties concerned. Interested parties may submit an application to the District Court regarding the dissolution of the company concerned. These interested parties might include: Public Prosecutors on behalf of public interest, the Board of Directors, the Board of Commissioners, the Company's employees, creditors, the shareholders themselves, as well as other stakeholders.

Although it has been regulated related to these provisions, Article 7 paragraph (7) of the Law 40/2007 opens the possibility of exceptions from the obligation of shareholders consisting of 2 (two) people, but the limitations are regulated in the article, which stated so:

“The provisions that require the Company to be established by 2 (two) or more persons as referred to in paragraph (1), and the provisions in paragraph (5) and paragraph (6) do not apply to:

- a. Company whose shares are wholly owned by the state; or
- b. Companies that manage stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions as stipulated in the law on the Capital Market.”

Wherein the explanation of Article 7 paragraph (7) states that due to the special status and characteristics, the requirements for the number of founders for the Company as referred to in the paragraph are regulated in separate laws and regulations. Whereas, after the existence of the Job Creation Law (UU 11/2020), Article 7 paragraph 7e was amended and added an exception, which is "Companies that meet the criteria for Micro and Small Enterprises.”

4. Regulations concerning Single-Member Company in Indonesia for Micro and Small Enterprises.

Before the implementation of Job Creation Law (“Omnibus Law” 11/2020), there are also numerous regulations (in multiple forms: Government Regulation, Ministry Regulation, etc.) that complement and modify the Law 40/2007 regarding Limited Liability Company. One of these regulation is the Government Regulation 29/2016 (GR 29/2016) that modifies the provisions concerning the minimum amount of authorized capital of a limited liability company which was originally regulated in the Company Law, that is IDR 50.000.000,- (fifty millions Indonesian Rupiah), through GR 29/2016 it becomes “based on the agreement of the founders”. Such amandement is made with a rationale to respect the principle of freedom of contract.

Then the definition of Limited Liability Company after the Omnibus Law has been expanded to be as follows: “Limited Company, hereinafter referred to as a Company, is a legal entity constitutes a capital alliance, established based on an agreement, in order to conduct business activities with the Company’s Authorized Capital divided into shares or individual legal entities that meet the criteria for micro-enterprises and small businesses as regulated in the laws and regulations concerning micro and small businesses.” However, by the Indonesia Constitutional Court decision number 91/PUU-XVIII/2020, the Omnibus Law 11/2020 is being stated under revision of the formation, and must be carried out within a period of 2 (two) years at the latest since the decision is pronounced (the decision is pronounced on November 25th, 2021), and if it is past that time period, it is declared permanently unconstitutional and has no legal binding force whatsoever.

Article 7 paragraph (7) of the Company Law after the Job Creation Law provides an exception to the provisions for the establishment of a company by a minimum of 2 (two) people, one of which is a company that meets the criteria for MSMEs. Then, in Article 7 paragraph (8) it is further explained that the Micro and Small Enterprises as referred to in Article 7 paragraph (7) letter e are Micro and

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Small Enterprises as regulated in the legislation regarding Micro and Small Enterprises. Therefore we must refer to Law No. 20 of 2008 jo. Government Regulation Number 7/2021. With the understanding of those regulations, we can know that there are 2 main criteria to determine whether a business is classified as a Micro or Small Business. The first is the criteria for Business Capital, in which a Micro Business actually has a business capital of up to a maximum of Rp. 1,000,000,000.00 (one billion rupiah) excluding land and building for the place of business; while Small Business has a business capital of more than Rp. 1,000,000,000.00 (one billion rupiah) up to a maximum of Rp. 5,000,000,000.00 (five billion rupiah) excluding land and buildings for business premises. The second is the criteria for Annual Sales Results/turnover, that Micro Businesses have annual sales results up to a maximum of Rp. 2,000,000,000.00 (two billion rupiah); while Small Business has annual sales of more than Rp. 2,000,000,000.00 (two billion rupiah) up to a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).

From these criteria, we know that Micro and Small Enterprises (MSEs) have a Business Capital of not more than Rp. 5,000,000,000.00 (five billion rupiahs) excluding land and buildings for business premises, and their annual sales are not more than Rp. 15,000,000.0000.00 (fifteen billion rupiah). Although in certain cases it can be determined based on other criteria determined by the Minister of the relevant business sector, for example the criteria for turnover, net worth, investment value, number of workers, incentives and disincentives, local content, and/or application of environmentally friendly technology in accordance with the criteria of each and every business sectors. For companies with business activities that meet the criteria for Micro and Small Enterprises, they are given the possibility to establish a Single-Member Company.

Based on Article 6 of Government Regulation number 8/2021, Single-member companies can be established by Indonesian citizens who are at least 17 (seventeen) years old and capable by law. The process is done by filling out a Statement of Establishment in Indonesian. Then, in Article 6 paragraph (3) of the GR 8/2021 it is emphasized that a Single-member company obtain its legal entity status after being registered by the Minister and obtaining an electronic registration certificate announced by the Minister on the official website of the directorate general that carries out duties and functions in the field of general law administration. At the time of this research, the directorate general in question was the Directorate General of General Legal Administration under the Ministry of Law and Human Rights.

Meanwhile, the important thing that must be remember is that in Article 9 paragraph 1 letter b of GR 8/2021: a single-member company is required to change its legal entity status to a limited liability company (under the Law 40/2007) if: it does not meet the criteria for micro and small businesses (MSEs) as stipulated in the provisions of the legislation regarding micro and small businesses. This means that the single-member company before becoming a limited liability company

under Law 40/2007 as referred to in Article 9 paragraph (1) must change its status through a notarial deed (from just a statement of establishment to a notarial deed establishment) and is registered electronically with the Minister.

B. Discussion

In connection of what previously described, there should be a limitation on the Single-Member Company which if it does not meet the criteria for Micro and Small Enterprises as described previously based on the article in Article 9 paragraph 1 letter b of GR 8/2021, then it is obliged to change its status to a Limited Liability Company as referred to in Law 40/2007. Therefore, the implication is that it should be established based on an agreement with a minimum of 2 (two) shareholders as mandated by Law 40/2007 concerning Limited Liability Companies. As for this limitation setting, it will be less effective if you look at the legal norms governing single-member companies in Indonesia and their relation to the concept that a single-member company is a legal entity, which is adopted in GR 8/2021.

The problem is, back to the concept of a legal entity as an entity that is seen as different from its owner, meaning that a single-member company is also a legal entity which must be viewed differently from its founder, which is the individual incorporator concerned, as adopted by Article 6 paragraph (3) of GR 8/2021 which confirms that "a single-member company obtains the status of a legal entity" (after being registered with the Minister and obtaining an electronic registration certificate). The implication of this concept is that it opens the possibility that a Limited Liability Company will be able to be established by a single person or a Completely sole-owner. Not only for MSEs but also non-MSEs businesses. As for the case of a Limited Liability Company with a non-MSEs scale, this might be done by means of the Founder establishing a single-member Company first, which then the said company that he has established, to establish a Limited Liability Company together with the Founder himself, or even with other individual companies established by the said person.

Considering the concept of Establishing a Limited Liability Company in Indonesia, that the establishment of a Limited Liability Company can be established by a "natuurlijke person" or an "artificial person", in this case because an Individual Company is an "artificial person" or a Legal Entity which legally must be considered different from the entity that owns it. This is also in line with Article 7 paragraph 1 of Company Law 40/2007 and its explanation, that what is meant by "person" is an individual, both Indonesian and foreign citizens or Indonesian or foreign legal entities. The provisions in this paragraph emphasize the principle that applies based on this law that basically as a legal entity, the Company is established based on an agreement, therefore it has more than 1 (one) shareholder.

On the other hand, this indirectly contradicts the explanation of the article itself which requires Limited Liability Companies (Non-MSEs) to have more than 1

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(one) shareholder. As related to this, there are no regulations or explanations in Indonesian laws and regulations regarding single-member companies. In addition to contradicting the explanation of Article 7 paragraph 1 of Company Law 40/2007, this will of course make the regulation of limiting single-member companies only intended for MSEs to be relatively ineffective because if the business has crossed the MSE limit (become non-MSEs), the founder of the single-member company concerned simply does Establishment of a Limited Liability Company between himself and the MSEs single-member company and become a Limited Liability Company (non-MSEs) with completely sole ownership without involving other people. If this can actually be done, then there is also the possibility of buying and selling shares between oneself and/or for one's own interest.

The question is whether this can indeed be done, and is the answer to the problem so far, which in essence is that the establishment of a limited liability company must find a "partner" at least 1 other person as the holder of 1 (one) share in a limited liability company. Or it turns out to be a legal smuggling that is contrary to 2 things, which are: contrary to the principle of establishing a limited liability company must be based on an agreement of 2 (two) or more person; and also contrary to the provisions of Article 9 paragraph 1 letter b of GR 8/2021.

In order to exterminate uncertainty concerning the laws governing the establishment of a single-member company, it should be necessary to make clear arrangements between the possibility of doing so in order to answer two important issues related to Sole ownership in the establishment of a non-MSEs Limited Liability Company. The first issue is that a single-member company is considered a separate legal entity from the entity that owns it, so wheter can or can't it serve as a founder of a limited liability company (especially in the context of a non-MSEs Limited Liability Company) together with the founder himself; Then the Second issue related to it, whether the Establishment of a Limited Liability Company which is established by a single-member company together with the founder itself is a legal smuggling which is prohibited because it is contrary to the principle that a Limited Liability Company must be established based on an agreement between 2 (two) persons or more, which it also makes ineffective the Regulation of Single-member companies in Indonesia is available only for micro and small enterprises. Thus, Article 9 paragraph 1 letter b of GR 8/2021 also is ineffective, which article stipulates that an single-member company is obliged to change its legal entity status to a limited liability company based on an agreement if it does not meet the criteria for micro and small businesses as stipulated in the provisions of the legislation regarding micro and small businesses.

Let's say the first idea is applied, which suggest that because the single-member company is a legal entity, so that a single-member company can appear as the founder of a Limited Liability Company (Non-MSE) together with its own founder or in other words "Completely Sole Ownership" of a Limited Liability Company is indeed possible to be conducted. With regard to the possibility of

adopting this idea, then the Regulation that limits “the single-member company only available for MSEs” becomes ineffective. Thus, if a sole ownership is possible in a non-MSE Limited Liability Company, then it should be regulated that this can be done from the start through the Limited Liability Company Law. And also, If the Single-member Company has obtained its legal entity status since its establishment, of course it becomes a question why it is necessary to make a deed of establishment of a Limited Liability Company again when the Individual Company has crossed the capital limit for Micro and Small Enterprises. To put it in a nutshell, this will be ineffective, and will be more effective if the Sole Incorporation can be carried out from the beginning through the Limited Liability Company Act as also applied in the laws and regulations in the United States as described previously, which allows the establishment of a limited liability company from the beginning by a single owner/corporator.

Meanwhile now, discussing about if the second idea is applied, which suggest that completely sole-ownership in a Limited Liability company isn't allowed because it is a form of law smuggling: both the principle of limited liability company establishment must be based on agreement, and also the regulation limiting single-member companies are specifically only reserved for micro and small enterprises. In that case, then it can be said that the single-member company regulation as referred to in GR 8/2021 jo. Company Law 40/2007 in Indonesia is not sufficient and still creates ambiguity in the application regarding the Establishment of a Limited Liability Company with a completely Sole ownership because there is no express prohibition in GR 8/2021 and the Company Law 40/2007 that regulates the Establishment of a Non-MSEs Limited Liability Company cannot be carried out by the individual company founder together with the single-member companu which he founded. Because there aren't any strict rules and/or prohibitions, it will certainly becomes a potential to cause differences of opinion and application by Notaries in Indonesia, which will create legal uncertainty.

Conclusion

With the application of the concept of a Single-member Company as a Legal Entity in Indonesia, the possibility of Sole Ownership and Incorporator is fully opened to a Limited Liability Company legal entity, either directly in the case of a Single-member company with micro and small business scale as referred to in GR 8/2021; as well as non-MSEs Limited Liability Company, where a sole establishment and ownership may be carried out by a single-member company together with the founder himself. On the other hand, this is also contrary to the principle that a Limited Liability Company in Indonesia must be established based on an agreement between 2 (two) or more person.

That the possibility of establishing a non-MSEs Limited Liability Company by sole incorporator and sole ownership will causes the regulation limiting single-member

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companies only for micro and small enterprises and Article 9 paragraph 1 letter b of Government Regulation 8/2021 becomes ineffective. Therefore, it turns out that when viewed from the concept of a Single-member Company as a legal entity that must be considered different from its founder, we can see that there is a possibility for a Sole Owner to Establish a Limited Liability Company with a non-MSE business scale. Regarding the two possibilities, which one will be applied, there is no explicit regulation in the laws and regulations in Indonesia, both the Company Law 40/2007 and GR 8/2021.

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