
LEGAL ACCOUNTABILITY OF A SOLE DIRECTOR IN MICRO AND SMALL LIMITED LIABILITY COMPANY

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Abstract. There is a need to investigate the regulation of legal accountability of a Sole Director who is also the founder of the company in a micro and small Limited Liability company based on Article 153 letter J of the Job Creation Law, because of the possibility of an ill-intentioned Director trying to protect his/her personal assets and assuming liability only for the shares he owns. Based on the aforementioned background, the problems in this study can be formulated as follow: 1. How is the accountability of a Sole Directors in a micro or small Limited Liability company regulated? and 2. What is the form of legal accountability for the sole Director in a micro and small Limited Liability company? The type of legal research used in this study is normative juridical research. The form of legal liability of a Sole Director in a micro or small Limited Liability company is closely linked to the principle of limited liability of the Board of Directors. If the requirement of having 2 (two) persons is not met, it will result in the limited accountability of the Limited Liability company becoming unlimited accountability. Unlimited accountability means that all legal actions and losses of the Limited Liability company become the personal liability of the founder or shareholder.

Keywords: accountability; micro and small limited liability company; sole director.

INTRODUCTION

Indonesia as one of the largest archipelagic countries in the world has various potentials. According to data from the Ministry of Cooperatives and Small and Medium Enterprises, the number of Micro, Small, and Medium Enterprises (MSMEs) in 2019 was around 65 million (Hartawan, 2011). With the hope to increase the Indonesian economy, on November 2, 2020, President Jokowi officially signed Law No. 11 of 2020 concerning Job Creation (hereinafter referred to as the "*Job Creation Law*"). There are 49 derivative regulations, consisting of 45 Government Regulations and 4 Presidential Regulations. With these derivative regulations, it is expected that the entry of foreign capital into the country is accelerated, in order to help Indonesian economy. It should be noted that the Job Creation Law is classified into 12 clusters and as many as 79 laws are synchronized in one law. One of them is in relation to license, in an effort to simplify the licensing process.

In addition, the increasing amount of unemployment in Indonesia has also made the government accelerate the formulation of the Omnibus Law or the Job Creation Law in mid-2020 so that the investment door can be opened. According to Bryan A Garner's Black Law Dictionary Ninth Edition: "*omnibus: relating to or dealing with numerous objects or items at once; including many things or having various purposes*", meaning relating to or dealing with various objects or items at once; including many things or having multiple purposes. It can be said that the concept of omnibus law is a catch-all and

comprehensive rule, bound to only one regulatory regime ([Kristiyanto, 2020](#)).

The Draft of Job Creation Law was initially rolled out for the purpose of simplifying the existing rules in Indonesia, especially those that inhibit the influx of investment into the country. Investment is the placement of money or funds with the hope of obtaining gain or profit on the money or funds ([Busroh, 2017](#)). Investment is also defined as a commitment to an amount of funds or other resources made at the present time, with the aim of obtaining profits in the future.

The cluster concerning simplification in conducting a business has attracted a lot of attention due to the inclusion of new provisions regarding the establishment of Limited Liability companies ([Dammann & Schündeln, 2012](#)); ([Wang, Sun, & OuYang, 2018](#)). In relation to the status of a company, several provisions in Law Number 40 of 2007 concerning Limited Liability companies (hereinafter referred to as the "*Limited Liability Company Law*") were also amended in the Job Creation Law. For example, Article 7 paragraph (7) of the Limited Liability Company Law is amended such that the requirement that a company must be established by 2 (two) or more persons is exempted for companies that meet the criteria for Micro and Small Enterprises (hereinafter referred to as MSE). Based on Article 153 letter A of the Job Creation Law, a company that meets the MSE criteria can be established by 1 (one) person and its establishment is sufficient based on a statement of establishment made in the Indonesian language. This is different from the previous law, where a Company is

established with a notarial deed in the Indonesian language with a minimum of 2 (two) founders.

Job Creation Law Article 153 letter J regarding Limited Liability companies contains provisions relating to liabilities in micro and small business companies. The Article 153 letter J paragraph (1) reads:

"Shareholders of the Micro and Small Limited Liability Companies are not personally accountable for the agreements made on behalf of the Company and are not liable for the Company's losses in excess of the shares owned."

Paragraph (2) states that there is a provision that may exempt the applicability of paragraph (1) under several conditions. This article results in a blurring of norms, considering that, in a Limited Liability company, there is only 1 (one) shareholder, who can also appoint himself as the Sole Director of the company.

In carrying out certain actions, the Sole Director has the opportunity to prioritize his personal interests ([Maner & Mead, 2010](#)), which may not be in line or may conflict with the interests of the company. While there is an obligation to make financial reports, there are shortcomings in terms of internal supervision of the company, as the Board of Commissioners (which is supposed to supervise the Director) is responsible to shareholders (who may also be Director of the company). Therefore, there is a possibility for a person with bad intentions to try and protect his personal assets and to assume liability only for the shares he owns in a micro and small Limited Liability company.

There is a need to conduct a study on

the legal arrangements for the accountability of a director who is also the founder of the company in a micro and small Limited Liability company based on Article 153 letter J of the Job Creation Law, due to the possibility of an ill-intentioned Director trying to protect his personal assets and assuming liability only for the shares he owns. This blurring of norms can lead to abuse of the company by the Director, considering that the Director is also the founder of the company.

Based on the aforementioned background, the problems in this study can be formulated as follows: 1. How is the accountability of a sole Directors in a micro or small Limited Liability company regulated? and 2. What is the form of legal accountability for the sole Director in a micro and small Limited Liability company?

The purpose of this study is to examine and analyse the legal accountability of a Sole Director in a micro or small Limited Liability company based on the Job Creation Law.

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

Regulation of Accountability of a Sole Director in a Micro and Small Limited Liability Company

Regulation of accountability of a Sole Director as an organ of the company is not only contained in the Limited Liability Company Law, but is also set in the Job Creation Law. According to the Job Creation Law, the Board of Directors can consist of only 1 (one) person as the Sole Director managing the business of the micro and small Limited Liability company. The Sole Director of the micro and small Limited Liability company also performs the same role in a manner that is very close to that of the Board of Directors of other Limited Liability companies in general.

The provisions in Article 153 letter D of the Job Creation Law, paragraph (1), reads:

"The Director of a Micro and Small Limited Liability Company, as referred to in Article 153A, carries out the management of the Micro and Small Limited Liability Company for the benefit of the Company in accordance with the purposes and objectives of the Company."

In addition, Article 153 letter D of the Job Creation Law, paragraph (2), reads:

"The Sole Director is authorized to carry out the management as referred to in paragraph (1) in accordance with the policies deemed appropriate, within the limits specified in this Law, and/or the statement of establishment of the Company."

It should be considered that one of the conditions for the establishment of a micro and small Limited Liability company is that it can be established by 1 (one) (sole) founder, as stated in Article 153 letter A paragraph (1) of the Job Creation Law, which reads:

"Companies that meet the criteria for Micro and Small Enterprises can be established by 1 (one) person."

Based on the above provisions, the founder of the company serves simultaneously as the Sole Director and the sole shareholder of the micro and small Limited Liability company. This results in the Sole Director having two roles at once, one as the Director who manages the company and another as a shareholder who makes decisions regarding the policies of the micro and small Limited Liability company. Decisions that have to be made by the Sole Director covers, for example, those concerning entering agreements with creditors, cooperation with investors, or even the decision to dissolve the company. In the event of the dissolution of the micro and small Limited Liability company, the decision of a one-person company has the same legal force as the General Meeting of Shareholders (GMS).

The authority possessed by a Sole Director in a micro and small Limited Liability Company is also accompanied by

the accountabilities inherent in his person, considering that the sole Director is also the shareholder of the micro and small Limited Liability company. The Job Creation Law, especially in Article 153 letter J of the Limited Liability company Section, paragraph (1), reads:

"The shareholders of the Micro and Small Limited Liability Companies are not personally accountable for arrangements

made on behalf of the Company and are not liable for the loss of the Company exceeding the shares owned."

The provisions in the aforementioned articles are almost the same as those contained in Article 3 paragraph (1) of the Limited Liability Company Law. For convenience, the two articles are presented in the following table:

Table 1. Comparison of Articles in the Limited Liability Company Law with the Job Creation Law

Article 3 of Law no. 40 of 2007 concerning Limited Liability Companies	Article 153 letter J Limited Liability Company Section Law no. 11 of 2020 concerning Job Creation
<p>1) The shareholders of the Company are not personally accountable for the agreements made on behalf of the Company and are not liable for the losses of the Company in excess of the shares owned.</p> <p>2) The provisions as referred to in paragraph (1) do not apply if:</p> <ul style="list-style-type: none"> a. the requirements of the Company as a legal entity have not been or are not met; b. the shareholder concerned, either directly or indirectly, in bad faith uses the Company for personal gain; c. the shareholder concerned is involved in an unlawful act committed by the Company; or d. the shareholder concerned, either directly or indirectly, unlawfully uses the Company's assets, resulting in the Company's assets being insufficient to pay off the Company's debts. 	<p>1) The shareholders of the Company for Micro and Small Enterprises are not personally accountable for the arrangements made on behalf of the Company and are not liable for the losses of the Company in excess of the shares owned.</p> <p>2) The provisions as referred to in paragraph (1) do not apply if:</p> <ul style="list-style-type: none"> a. the requirements of the Company as a legal entity have not been or are not met; b. the shareholder concerned, either directly or indirectly, in bad faith uses the Company for personal gain; c. the shareholder concerned is involved in an unlawful act committed by the Company; or d. the shareholder concerned, either directly or indirectly, unlawfully uses the Company's assets, resulting in the Company's assets being insufficient to pay off the Company's debts..

Based on the description in the table above, we can see that Article 3 of the Limited Liability Company Law and Article 153 letter J of the Job Creation Law have similarities, although on the other hand there are differences. The difference is in paragraph (1) of each article. Article 3 paragraph (1) of the Limited Liability Company Law states "the shareholder of the Company", while Article 153 letter J paragraph (1) of the Job Creation Law states "*the shareholders of the Company for Micro and Small Enterprises*".

Article 153 letter J of the Job Creation Law does not provide further explanation. In contrast, Article 3 of the Limited Liability Company Law provides further explanation, which reads:

Elucidation of Article 3 Paragraph (1) of the Limited Liability Company Law:

The provisions in this paragraph emphasize the characteristics of the Company that shareholders are only liable for the deposit of all the shares they own, not including their personal assets.

"Elucidation of Article 3 Paragraph (2) of the Limited Liability Company Law:

In certain cases, it is possible to exempt such limited liability if the provisions mentioned in this paragraph are proven. The liability of shareholders in the amount of the deposit for all the shares they own may be exempted if it is proven, among other things, that there is a mixing of the shareholder's personal assets and Company assets."

The provisions in Article 3 of the Limited Liability Company Law can be implemented because a Limited Liability

Company based on the Limited Liability Company Law has three corporate organs ([Sukmana, Asikin, & Djumardin, 2020](#)), each with their respective duties and authorities: the Board of Directors as the manager of the company, the Commissioner as the supervisor and advisor of the company, and of course there is a GMS as a forum for deciding company policies or decisions. The separation of function of the company's organs should minimize the occurrence of Ultra Vires acts carried out by the company outside the objectives and authority of the legal entity. In this sense, potential abuse of authority by the Board of Directors can be prevented because there is a company organ that supervises it, namely the Commissioner. An inappropriate company policy can be prevented so as not to make the company suffer losses. On the other hand, the Board of Directors of the company cannot make decisions without the knowledge and approval of the GMS, since the company consists of several different shareholders ([Lu & Abeysekera, 2014](#)); ([Cai, Hillier, & Wang, 2016](#)); ([Jiang, Cai, Wang, & Zhu, 2018](#)); ([Cao, Peng, & Ye, 2019](#)).

However, if such concept is used in the context of Article 153 letter J of the Job Creation Law, even though the same term "*companies*" is used, it must be noted that in a Limited Liability company, micro and small businesses can be established by 1 founder, in which the founder acts as the sole shareholder and also as the Board of Directors that manages the company. While in a Limited Liability company there are generally at least 2 (two) persons, a Limited Liability Company for micro and small businesses can be established by just

1 (one) (sole) person. Even though Article 153 letter J paragraph (1) of the Job Creation Law states that the shareholders of the Company for Micro and Small Enterprises are not personally accountable for the arrangements made on behalf of the Company and are not liable for the losses of the Company in excess of the shares owned, it is obvious that, because there is only 1 (one) person who acts both as a shareholder and a Director in the company, in this case a micro and small business Limited Liability company, there will be potential for abuse of the company. There is no internal supervision and, in making decisions, a Board of Directors of a Micro and Small Business Limited Liability Company only needs to conduct a GMS with himself, considering that he is the sole shareholder in the company.

In order to obtain a more in-depth understanding, a grammatical interpretation will be used, i.e., an interpretation made based on the terminology or words and sentence structure in a context of language used by lawmakers in formulating certain laws and regulations. Thus, it can be comprehended that the words contained in Article 153 letter J paragraph (2) of the Job Creation Law state that the provisions in paragraph (1) do not apply if:

a. First, whether or not the requirements as a legal entity of the Company have been or are met. The validity of a legal entity is confirmed when it is approved by the Ministry of Law and Human Rights. Based on Article 6 paragraph (3) of Government Regulation Number 8 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment, and

Dissolution of Companies that Meet the Criteria for Micro and Small Businesses, it is regulated that a one-person company obtains the status of a legal entity after it is registered with the Minister and obtains an electronic certificate of registration. The establishment of a legal Limited Liability company for micro and small businesses is also directly supervised by the ministry through the Legal Entity Administration System, which is an electronic information technology service for the Company organized by the Directorate General of General Legal Administration;

b. Second, whether the shareholder concerned, either directly or indirectly, in bad faith uses the Company for personal gain. This second provision is very subjective, considering that the decisions of the Board of Directors are also the decisions of the shareholders, as these are made by the same individual. It is very difficult to know whether the intention of the shareholder is good or bad because there is no company organ that internally oversees in the Limited Liability company of micro and small businesses. In management of a company, a bad faith in using the company for personal gain is contrary to the principle of fiduciary duty. In this principle, there is a value of trust that must be maintained and upheld. In implementing the principle of fiduciary duty, a Board of Directors must carry out its duties in good faith so as not to harm other parties;

c. Third, whether the shareholder concerned is involved in unlawful acts committed by the Company. The presence of only one person who is a shareholder in the company makes the company susceptible to committing an

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- act against the law. The Director, who is also the shareholder, can take actions that are outside his authority or take actions that are within his authority but not in accordance with the aims and objectives of the company. If this happens, the principle of piercing the corporate veil can apply, so that the shareholder, who is also the Director, is accountable for his unlawful acts and is no longer liable only to the extent of the shares owned;
- d. Fourth, whether the shareholder concerned, either directly or indirectly, illegally use the Company's assets, which results in the Company's assets being insufficient to pay off the Company's debts. In a company, in order to increase the company's income, in general the company will try to increase capital by borrowing from a creditor. But in the business world, profit and loss is not unusual. On the other hand, it should be noted that, in borrowing capital for the company, the company's ability to pay must be taken into account. In general, misuse of company assets often occurs. This will become a problem when the company commits acts against the law and causes losses to other parties, while the shareholder who is also a Director takes refuge from the limited liability of shareholders in terms of paying debts to creditors. Moreover, in a Limited Liability company for micro and small businesses, there is only one single shareholder who also serves as the Board of Directors in controlling the company and entering into agreements. *"Everyone is accountable not only for losses caused by his actions, but also for losses caused by negligence or carelessness."* In general, in the civil law, legal sanctions can take the form of an obligation to meet a certain performance (obligation) as well as the loss of a legal state, followed by the creation of a new legal state. Legal accountability in the field of civil law is a legal accountability based on civil relationship between the legal subjects.
- e. Administrative Accountability
In administrative law, legal accountability takes the form of administration or administrative sanctions. Administration or administrative sanctions are sanctions imposed on administrative violations or provisions of laws of an administrative nature. In general, administration or administrative sanctions takes the form of fines, suspension to revocation of certificates and/or permits, temporary cessation of administrative services to reduction of production allotments, as well as other administrative actions. Similar to the Board of Directors in a Limited Liability company in general, the Board of Directors in a Limited Liability company for micro and small business also carries accountabilities. Accountabilities are generally stated in the laws and regulations or other regulations that bind them.
- One of the obligations is to make financial reports by the Board of Directors of a Limited Liability company for micro and small businesses, as stipulated in Article 10 paragraph (1) of Government Regulation Number 8 of 2021, which rules:
- "One-person companies shall make financial reports."* In this provision, the financial reports are used as a data base for the profile of one-person companies and the basis for consideration in determining the criteria for one-person companies. If
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the financial report has been submitted to the ministry, then the relevant minister shall issue proof of receipt of the financial report electronically after the applicant fills out the form. One-person companies that do not submit financial reports will be subject to administrative sanctions in the form of:

- a. written warning;
- b. Cessation of rights of access to services; or
- c. Revocation of legal entity status.

Furthermore, the provisions of Article 20 of the Minister of Law and Human Rights Number 21 of 2021, regarding Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of a Limited Liability Company Legal Entity, briefly regulate that, in the event that an individual company does not submit financial reports within 6 (six) months of the obligation to submit financial reports. a written warning shall be sent electronically. If the one-person company does not fulfill the obligation to submit financial reports within 3 (three) months after the written warning is submitted, the minister shall submit a second written warning electronically. Then if the one-person company still does not fulfill the obligation to submit financial reports within 30 (thirty) days after the second written warning, the minister shall terminate the company's access rights to the services of the Legal Entity Administration System. A request for reopening an individual company's

access rights that has been terminated may be submitted in writing to the minister. If the one-person company does not fulfill the obligation to submit financial reports within 5 (five) years after the access rights to the Legal Entity Administration System service are terminated, the minister shall revoke the legal entity status of the one-person company concerned. The follow-up to this is that the Minister shall issue a certificate of revocation of the legal entity status of the one-person company and announce it on the official website of the Directorate General of General Legal Administration.

Based on this description, it is clear that the Limited Liability company for micro and small businesses is only subject to administrative responsibility (sanctions). However, in light of the accountability of the Sole Director in a micro and small business Limited Liability company, there are several things that must be considered in relation to the principle of limited accountability of the Board of Directors. In the general management of the company, there are at least three interests that must be considered, i.e.:

- a. The company's interest;
- b. The interests of the company's shareholders, especially minority shareholders; and
- c. The interests of third parties that are legally related to the company, in particular the interests of the company's creditors.

As with other violations of the law,

which give the aggrieved party the right to, and on his behalf to, file a lawsuit against the party who causes the loss, the violation by the Board of Directors in managing a Limited Liability company for micro and small businesses also leads to the right to charge the Board of Directors causing the loss. Initially, under normal circumstances, the Board of Directors acts in the interest of the Company. In such a context, if there is a loss to the assets of the company that is caused by the actions of the Board of Directors that are wrongful, negligent, having a conflict of interest, or against the law, then the company is the only party entitled to claim the loss.

One of the principles of a Limited Liability company is "Established by Agreement". This principle means that a Limited Liability company is established by 2 (two) or more persons with a notarial deed. If the requirement of having two persons is not met, it will result in the limited accountability of the Limited Liability company becoming unlimited accountability. Unlimited accountability means that all legal actions and losses of the Limited Liability company are borne by the founder or shareholder personally. This condition, of course, is contrary to the "Limited" principle that has been applied so far.

The company is separate and different from its owners or shareholders, thus the liability of the shareholders is only limited to the value of their shares, as stated in Article 3 paragraph (1) of the Limited Liability

Company Law and Article 153 letter J paragraph (1) of the Job Creation Law, which states that the shareholders of the Company are not personally accountable for the arrangements made on behalf of the Company and are not liable for the Company's losses in excess of the shares owned. The provisions in this paragraph emphasize that the shareholder is only responsible for the deposit of all the shares he owns, not including his personal assets. This limited liability provides flexibility in the allocation of risks and benefits between equity holders and debt holders, reduces the cost of collecting transactions in cases of insolvency (insolvency), and facilitates and substantially stabilizes share prices ([Dawe & Timmer, 2012](#)).

John H. Matheson argues: "Limited liability of business owners for the contracts, torts, and other liabilities of their companies has been commonplace for over one hundred and fifty years. This concept of limited liability means that a business owner's potential personal loss is a fixed amount, namely, the amount invested in the business, usually in the form of stock ownership. Consequently, if the business succeeds, the owner obtains the profits, but if he business fails, all of the losses beyond the owner's fixed investments are absorbed by others, that is, voluntary or involuntary creditors, or society at large" ([Mas-Tur, Pinazo, Tur-Porcar, & Sánchez-Masferrer, 2015](#)). This definition can be freely translated, namely that the limited liability of the owner of the

company in terms of contracts, unlawful acts, or other liabilities of the company has become commonplace within a period of one hundred and fifty years. The concept of limited liability is that the potential personal loss of the business owner is a fixed amount, i.e., the amount of investment invested in the company, usually in the form of shares. Consequently, if the business is successful, the shareholders will benefit, but if the business is not successful, all losses beyond the amount invested will be borne by another person or party, in this case permanent or non-permanent creditors and society in general.

The establishment of a Limited Liability company that can be carried out by one party is not coherent with the Limited Liability principle that should be put forward in the management of a Limited Liability Company. A Limited Liability company must be managed and controlled by two or more persons. This is important to carry out the function of "*checks and balances*" in making strategic decisions of Limited Liability companies. In addition, considering the adopted principle of limited liability, the requirement for two or more parties is important to apply so that the principle of limited liability to the company can be applied.

Based on the description above, the responsibility of the Board of Directors in a Limited Liability company for micro and small businesses is "limited" as long as it does not violate the provisions of

Article 153 letter J paragraph (2) of the Job Creation Law. However, this limited accountability will be exempted if it is proven that the Board of Directors of a Limited Liability Company for Micro and Small Business complies with the elements of Article 153 letter J paragraph (2) of the Job Creation Law. With the exemption of the limited accountability, the sole Director will be personally accountable for criminal, civil, or administrative accountability, whichever is in accordance with the form of fault, unlawful act, or violation committed.

CONCLUSIONS

Based on the discussion, conclusions can be drawn to answer the problems raised in this study as follows: First, the regulation of the accountability of the Sole Director in a Limited Liability company for micro and small businesses is not only contained in the Limited Liability Company Law, but is also regulated in the Job Creation Law. The Board of Directors in the Job Creation Law may even consist of only 1 (one) person or as the Sole Director in running the micro and small business company organs ([Tricker, 2011](#)). The provisions in Article 3 of the Limited Liability Company Law can be implemented because a Limited Liability company based on the Limited Liability Company Law has three corporate organs, each with their respective duties and authorities. However, if the concept is used in Article 153 letter J of the Job Creation Law, even though the same term "*companies*" is used, it must be

considered that a Limited Liability company for micro and small businesses can be established by 1 founder, in which the founder will become the sole shareholder and also the Directors who manages the company.

Second, the form of legal accountability of a Sole Director in a Limited Liability company for micro and small business is closely related to the principle of limited accountability of the Board of Directors. This principle means that a Limited Liability company is established by 2 (two) or more persons with a notarial deed. If the requirement of 2 (two) persons is not met, it will result in the limited accountability of the Limited Liability company becoming unlimited accountability. Unlimited accountability means that all legal actions and losses of the Limited Liability company are borne by the founder or shareholder personally. With the exemption of the limited liability, the Sole Director will be personally accountable for criminal, civil, or administrative accountability, whichever is in accordance with the form of error, unlawful act or violation committed.

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