Budapest International Research and Critics Institute-Journal (BIRCI-Journal)
Humanities and Social Sciences
ISSN 2615-3076 Online)
ISSN 2615-1715 (Print)
www.bircu-journal.com/index.php/birci
Budapest Institute

Principles of Lending Business Capital for Private Companies

Cut Ayu Erja Nabillah A.Beh[1], Rio Nugroho Fahmi[2], Rachmanda Yanuar Pradana[3], Carolina Septiani[4]
[1,2,3,4]*Faculty of Law, Universitas Airlangga Surabaya, Indonesia*
sitimaimunah@unimal.ac.id, hamdiah@unimal.ac.id, yohanadianputri@unimal.ac.id

Abstract

The research, entitled "Principles of Lending Business Capital for Private Companies" aims to more deeply know and understand and analyze how the principles of lending business capital for private companies are based on the latest regulations. The research method used is normative research. Normative research is research using a statutory approach and draws on legal principles relating to legal entities, companies, individual companies. Based on the results of this study, it can be concluded that, First, an individual company is actually owned by the community in the form of a UD, but under the Job Creation Act, this company is a legal entity. However, in the realization of the establishment of this company, there are legal norms in lending to banks. Therefore, until now the problem of borrowing capital has not yet been resolved or directly reviewed so that the founder of the company can meet the requirements and conditions of the bank.

Keywords
legal entity; capital loans; private company

I. Introduction

Economic inequality in the country is a problem that never ends to be discussed. Nonetheless, global marketing is becoming increasingly crucial in realizing the potential success of a company in the modern era. If we take a look at the economic growth in Indonesia's trade sector, particularly in the current digital era, it can be seen that the direction is already in a positive direction to move forward, as evidenced by the increasing number of companies doing business in Indonesia, which is supported by statistics (Diatmika & Purwanti, 2020). The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Economic growth is still an important goal in a country's economy, especially for developing countries like Indonesia (Magdalena and Suhatman, 2020).

Along with its development, the current economic sector in positive law in Indonesia has regulated the forms of companies, both legal and non-legal entities, these types of companies include, Trading Businesses/Individual Companies, Civil Partnerships, Firms, Limited Partnerships (Commanditaire vennotschap) or Limited Liability Company (hereinafter referred to as PT). The forms of these companies have their own characteristics, such as PT. In its implementation, the Limited Liability Company is one form of company that is most in demand by the public compared to other forms of business entity (Sinaga, 2018).

This regulation governing Limited Liability Companies has evolved over time and is currently explained in Article 1 point 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law), as amended by Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law). Article 1 point 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Limited Liability Company Law) states

DOI: https://doi.org/10.33258/birci.v5i1.3876

that a Limited Liability Company is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or Individual Legal Entities that meet the criteria for Micro and Small Businesses as stipulated in the Laws and Regulations regarding Micro and Small Enterprises (Zulhidayat & Aslamiyah, 2021).

A new type of PT was created with the passage of the Job Creation Law, which is defined in Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital as well as its registration, establishment, change of ownership, termination of operations (hereinafter known as PP Number 8 of 2021), and which meets the criteria for micro and small businesses, referred to as Individual Companies. The goal of this law addressing individual companies is to assist MSEs that were initially unorganized in terms of capital and management in order for them to become more structured and organized Individual Companies, which would then improve the income of MSEs that are actors in the economy (Gloria, 2021). Therefore, creating a new community-owned business or empowering existing community-owned enterprises can both be considered efforts to simplify rules.

According to Article 6 paragraph 2 of Government Regulation (PP) Number 8 of 2021, an individual company can be created by 1 (one) person with a minimum age of 17 (Seventeen) years. This clearly establishes the difference in the normative element between the Limited Liability Company Law and the Limited Liability Company Act when it comes to how a limited liability company establishment agreement with the creation of a deed of establishment conducted before a notary differs from the provisions contained in Law No. 2 of 2014 amending Law No. 30 of 2004 on Notary Offices (hereinafter referred to as the Notary Office Law) with the deed of establishment faced with notary that the face-to-face must be 18 (eighteen) years of age or have been married.

Hence, in this case the Individual Company in terms of its establishment, change and dissolution no longer requires a Notary deed, as for other differences, namely regarding shareholders in Individual Companies which are different from shareholders in PT as regulated in the Limited Liability Company Law which can be in the form of individual or corporate legal subjects. According to the law, in an individual company that can become a shareholder or only an individual owner, the job creation law changes the rules of ratification into registration, including for this individual company. Legal entity status is obtained after registering a statement of incorporation electronically and obtaining proof of registration. Business actors who establish individual companies are also exempted from the obligation to announce in the Supplement to the State Gazette as a form of bureaucratic simplification. However, in fact the private company raises several problems, regarding the principle of business capital lending and regarding whether the systematic is the same as the regulation in the Limited Liability Company Law (UUPT) which has complete structure in the form of directors, commissioners and GMS, therefore this study aims to analyze these problems. Hence, with regard to this background, the author will limit writing related to: What is the principle of business capital lending for private companies? and What are the legal loopholes and suggestions for improving the business capital lending arrangements for private companies?.

II. Research Method

This legal research was conducted using the normative research method, which was employed by the author to gather information for this legal research. Normative research is research using a statutory approach and draws on legal principles related to business capital lending for individual companies (Salim, 2010). While the problem approach used in this legal research uses a statute approach. The statute approach is carried out by reviewing all laws and regulations related to the legal issues being handled (Marzuki, 2011).

III. Results and Discussion

3.1 Legal Entity Company Concept

Apart from being a human being, a legal entity is one that is deemed to be capable of acting under the law and to have rights, obligations, and legal relationships with other individuals or entities. Legal entities, like human beings, are supporters of rights and obligations (Muhammad, 2000). Legal entities can enter into business relationships with other parties as long as they support their rights and responsibilities. Like any other individual or corporation, this one has wealth, rights, and responsibilities that only it can bear. If those assets are insufficient to pay corporate obligations, they will be unable to be met from the management or founder's resources in order to avoid bankruptcy or liquidation. Even if it receives a loan from its management or founder, or if a State-owned firm receives a state injection of money, the loan or injection of funds will be regarded as the legal entity's debt.

Based on Article 1653 of the BW, all private associations are considered as legal entities and for that it is necessary to ratify the deed by reviewing the objectives and other rules of the association. Legal entities are supporters of rights and obligations, just like individual humans. As a supporter of rights and obligations, he can enter into business relations with other parties. Therefore, he has his own wealth, which is separate from the wealth of the administrator or founder. All legal obligations are fulfilled from the assets owned. However, if the wealth is not sufficient to cover its obligations, even then it will not be able to be fulfilled from the wealth of the management or founder because in a legal entity the form of liability is limited to the shares owned (Muhammad, 2010).

Limited Liability Company (PT) is an association or entity that is composed of several shareholders and that has separate capital from the assets of the owner or founder with the assets of the company. This company is established on the basis of an agreement and conducts business activities with authorized capital that is entirely divided into shares and that has complied with the requirements imposed by law (Sudaryat, 2008). At the normative level 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 reads:

"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 has fulfills the requirements stipulated in this law and the implementation contests."

Capital in PT consists of authorized capital, issued capital, and paid-up capital. The addition of capital and the reduction of capital must have a decision from the GMS. Shares are a concrete form of capital in the company, shareholders in the company must be given proof of the owners of the shares they own. Shareholders have the following rights:

a. Attend and vote on the GMS
b. Receive dividend payments and the remaining proceeds from liquidation
c. Exercising other rights as stipulated in the Limited Liability Company Law (UU PT)
d. Obtain permanent legal force

In the Limited Liability Company Law, shares are regulated in the fifth part of article 48 concerning shares

3.2 Characteristics of Individual Company

An individual company is a form of business that can be established by 1 (one) person with almost the same regulations as a Limited Liability Company (PT), but has a very easy establishment process and does not need to be established before a notary. In this individual company, it is stated that the company has a very limited liability system.

The enactment of the Employment Creation Law which discusses individual companies. Individual companies were created by the Government to improve the Indonesian economy by maintaining the existence of MSMEs. The existence of MSMEs in Indonesia is quite large than large businesses. With the existence of the Job Creation Law, the Government regulates the form of a new legal entity, namely private company with limited liability (sole proprietorship with limited liability). The requirements for the legal subject of this individual company can be established at the age of 17 years and are legally competent, besides that they must meet the criteria of MSMEs as regulated in the legislation regarding micro and small businesses, when an individual company is dissolved then this is also done by a single company. people electronically.

The establishment of this company has been added to the Job Creation Law article 153A paragraph (1) which states that a company that meets the criteria for MSMEs can be established by 1 person, then article 6 paragraph 1 of PP Number 8 of 2021 emphasizes that the founder of the company must be established by an Indonesian citizen. The next process is to fill in the establishment statement format as regulated in Article 7 paragraph 1 PP Number 8 of 2021, the establishment statement is registered electronically to the Minister, in the following format: (Izin Kilat, 2021)

a. The name and domicile of the individual company;
b. The period of establishment of the individual company
c. Purpose and objectives as well as individual business activities;
d. The amount of authorized capital, issued capital, paid-up capital;
e. Nominal value and number of shares;
f. Address of individual company;
g. Full name, place and date of birth, occupation, place of residence, residence registration number, and taxpayer identification number of the founder as well as director and shareholder at the same time.

This company registration is through the Online Single Submission (OSS) system, which is a business licensing service in order to standardize the licensing bureaucracy at the central and regional levels so that services in business licensing can be easy, fast, and integrated. After registering electronically and obtaining an official certificate, this individual company obtains the status of existence as a legal entity which is announced on the official website of the directorate general who plays a role in the duties and functions of general law administration.

The provisions for selecting the name of Individual Company are not specifically regulated. Thus, it still uses the provisions for using the name PT (regular) as regulated in Government Regulation No. 43 of 2011 (PP 43/2011). In Government Regulation (PP) 43/2011, it is stated that the name of the PT must use the Indonesian language and may not use a foreign language. In addition, when ordering a name, it is also ensured that the name of the PT must not be the same or contain a resemblance to the name of the existing PT and must consist of at least 3 words and must not contain numbers.

Individual companies have an obligation to make financial reports to the Minister of Law and Human Rights. Financial reports are carried out by filling out the electronic form of the contents of the financial report submission form no later than 6 months after the end of the current accounting period. The financial report contains:

a. Statement of financial position
b. Income statement
c. Notes to the current year's financial statements

However, if the company does not submit financial reports, sanctions will be imposed, such as:

a. Written warning
b. Termination of access rights or services
c. Revocation of legal entity status In addition to financial statements there is also a limit on how many companies the founders can establish, this provision is regulated in Article 153E paragraph 2 of the Limited Liability Company Law which stipulates that founders can establish 1 individual company in 1 year.

Every business entity that is established always has weaknesses and strengths in the process of its establishment. As with individual companies, it also has advantages and disadvantages in running its business, which are as follows: (Kabar Notariat, 2021)

a. Advantages
   1) Businesses established with the individual company system are not subject to tax like PT or firms;
   2) Individual company business actors are not so complicated to monitor, apart from that, their internal management is also easy;
   3) Costs in management tend to be lower because the business actor also has duties as an employee of the business itself;
   4) Does not require legal administration such as to a Notary.
b. Disadvantages
   1) Limited sources of capital;
   2) Management is also disrupted;
   3) Guaranteed business continuity that tends to be low.

3.3 Business Capital for Individual Companies

Business capital is one of the most significant parts of entrepreneurship that must exist since it is no less vital as labor, technology, economics, and legality in terms of importance. Many individuals believe that money is not the most important factor in business. When it comes to business capital, it can be defined as funds that are used to operate a business. Following expert comments, Prof. Bakker believes that capital is a tangible item located in the homes of business owners and executives.

In an individual company, the capital used to establish the business entity is not regulated regarding the minimum, it has differences with Limited Liability Company (PT) where the authorized capital is clearly determined. Therefore, it makes very easy for MSME founders. Article 4 of PP Number 8 of 2021 confirms that 25% is fully paid-up capital and is proven by valid proof of deposit and submitted electronically no later than 60 days from filling in the statement of establishment for individual companies (Pangesti, 2021).

One of the important elements related to private companies is in terms of authorized capital. The Employment Creation Act has special provisions in regulating the authorized capital efforts of individual companies which are located in article 87 which changes several articles of Law Number 20 of 2008 concerning Micro, Small, Medium Enterprises. Regarding the minimum capital, the Job Creation Law does not regulate it, thus there is no minimum provision for individual companies (FJP Law Offices, 2021). Meanwhile, the maximum capital owned by this individual company is regulated in the OSS, namely Micro Business with a maximum of 1 billion and Small Business above 1 billion - 5 billion, if the company already has a capital of more than 5 billion as stipulated in the OSS system, the company must change to public company. After registering electronically and obtaining an official certificate, this individual company obtains the status of existence as a legal entity which is announced on the official website of the directorate general who plays a role in the duties and functions of public law administration.

When associated with business actors, the capital used in establishing the business comes from personal capital first to run the business entity, obviously.

3.4 Legal loopholes and Proposed improvements to Lending Arrangements

Arrangements related to lending for individual companies, as the arrangements can be made, certainly have legal loopholes that can occur. This includes the banking system in Indonesia, which has the function of collecting and distributing funds that have been obtained from the public (OJK, 2011). Based on Article 5 of Law No. 21 of 2011 concerning the Financial Services Authority states that the Financial Services Authority has carried out the function of regulation and supervision of all activities in the national financial services sector.

Legal loopholes that are very likely to arise stem from the provisions regarding the shareholders of the individual company itself. An individual company established by the founder is the only shareholder so that it has full power over the company. So that the possibility of abuse of power and even acts of corruption are very possible due to the irresponsibility of the individual company. In addition, it is also possible to make changes to the data on founders who are directors as well as shareholders so that it appears as if the acquisition or transfer of control of all shares in an individual company is allowed (Syaifuddin, 2016).

Based on the explanation that has been explained, it is necessary to make an improvement in the arrangement of business capital lending for individual companies in order to create a good arrangement and avoid bad faith in the utilization of the financing system. directors who can harm creditors or other parties on the basis of limited liability of shareholders.

From the explanation that has been mentioned, it can be proposed to improve lending arrangements as follows, namely that the government needs to take preventive action against legal loopholes that may arise, namely by strengthening the basic legal arrangements and implementing regulations in the future. In addition to the need for an integrated and up-to-date MSE system, it must also be supported by quality human resources at the relevant Ministries. It is also important to disseminate information to the public regarding the concept of running an individual company and the procedures for reporting the financial statements of an individual company. Notaries, as the closest public official to the community, should also be taught and invited to collaborate with the government in offering socialization and support to individuals seeking to register their own businesses (Aziz & Febriananingsih, 2020).

Since the issue of a certificate of incorporation, an individual company acquires the status of a legal entity. Naturally, it requires more funds to operate and build a business entity, but this creates various difficulties with legal standards, most notably when lending capital to third parties, including banks. The bank has its own requirements for lending funds to legal businesses, the requirement includes: Deed of establishment and amendments, Business Permit Number, Trading Business License, Company Tax Identification Number (TIN/NPWP), Id Card (KTP) and Tax Identification Number (TIN/NPWP) of Management, Id Card (KTP) and Tax Identification Number (TIN/NPWP) for Shareholders, Domicile Letter, and Data Guarantee.

If the individual company is a legal entity, then the business actor must fulfill all of these requirements. However, in the case that has been mentioned, it has weaknesses in fulfillmentdeed of establishment requirements. The establishment of an individual company according to the Job Creation Law can be established by business actors who are 17 years old which has also been confirmed in Article 6 PP Number 8 of 2021, while in the procurement of a deed of establishment legal subjects who can deal with a notary are 18 years old in accordance with Article 39 paragraph 1 UUJN. As a result of the applicable legal provisions, there has been a conflict about the founder's age to perform a legal act, namely an agreement. As a result, if an individual company wishes to lend business capital by completing the conditions for collecting a deed of establishment, this company will inevitably be unable to do so.

3.5 Improvement of Business Capital Lending Arrangements for Individual Companies

The regulation on the Employment Creation Law and the regulations regarding individual companies still has a legal loophole so that further studies are needed. Because in this legal loophole, people who have bad intentions can take advantage of financing facilities and incentives from the government for personal gain. The possibility that can occur from legal loopholes is the discovery of abuse of power and corrupt behavior from the founders, shareholders and at the same time.

IV. Conclusion

The introduction of the Job Creation Law, which regulates the establishment of specific businesses, is intended to improve the investment climate for small and medium-sized enterprises (SMEs). Unlike a limited liability company, an individual company is a form of business that is a legal entity and has similar characteristics to a Limited Liability Company (which is regulated in Law No. 40 of 2007 concerning Limited Liability Companies), but it has a weakness, namely legal problems related to the age of the founder of this company. There is still a legal loophole in the rule governing the Job Creation Law and the regulations governing specific companies. Because of the legal loopholes, it is possible to make use of things that lead to discrepancies.

The government must be prepared for any eventuality by bolstering existing legal frameworks and putting in place new rules. In addition, the relevant Ministry should have an integrated UMK system of quality human resources. As a part of the socialization process, it is vital to get to know the local business community and the procedures for filing individual company financial statements.

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