

EFFECTIVENESS OF LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION ON THE IMPLEMENTATION OF GENERAL MEETINGS OF SHAREHOLDERS IN INDIVIDUAL COMPANIES

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ABSTRACT

Law Number 11 of 2020 concerning Job Creation has spawned a new term in the legal world: individual company. A company with one founder seems attractive for further research because it has similarities with a sole proprietorship (UD) or a personal business (UP) but has the status of a legal entity like a limited liability company (PT). The Job Creation Law also explained the definitions of the three company organs, but only highlighted the authorities and obligations of the Directors. This research aimed to examine and analyze the effectiveness of Law Number 11 of 2020 concerning Job Creation for holding General Meetings of Shareholders (GMS) in an individual company because holding a GMS had an essential role in the progress of a company. The legal research was normative-descriptive juridical research using the statutory approach. The research results showed that the Job Creation Law could not be effective because it did not yet contain preventive, curative, or facilitative properties. Even though the Job Creation Law could improve the economy and investment in Indonesia, this law still had many legal loopholes that should be developed or refined again by the government. One of these legal loopholes was the absence of clear and detailed arrangements regarding the procedure for holding a GMS in an individual company so that individual companies could not yet hold a GMS. It shows that the Job Creation Law has not implemented the principle of legal certainty for individual companies. As a suggestion for the future, the government is expected to immediately issue implementing regulations for the Job Creation Law so that the resulting legal product becomes effective.

Keywords: Effectiveness, Job Creation Law, General Meeting of Shareholders, Individual Companies

INTRODUCTION

The intended Job Creation, according to Article 1 point 1 of Law No. 11 of 2020, is an effort to create jobs through efforts to facilitate, protect and empower cooperatives and micro, small and medium enterprises, improve the investment ecosystem and ease of doing business, and Central Government investment and accelerate national strategic projects. It is hoped that Job Creation in Indonesia can increase people's opportunities to get jobs to help advance the national economy. Job Creation adheres to principles, including the principle of equal distribution of rights, the principle of legal certainty, the principle of ease of doing business, the principle of togetherness, and the principle of independence.

The enactment of Law Number 11 of 2020 concerning Job Creation has impacted or influenced many sectors (Maharany et al., 2022), including business law, especially companies. There is a new term in the Job Creation Law, namely Individual Company or Individual Legal Entity, as outlined in Article 109 paragraph (2), in which the company is aimed more at companies that meet the criteria for Micro and Small Enterprises. Its establishment is unique because an individual company can be established by one person without a notarial deed, only based on an Indonesian language statement of incorporation.

It is inversely proportional to the previous regulation; Law Number 40 of 2007 concerning a Limited Liability Company states that a Limited Liability Company is a legal entity, i.e., an association of capital. Its establishment is based on an agreement. It carries out business activities with authorized capital divided into shares (Wardhani & Sulistiyono, 2018). According to this definition, it can be understood that based on Company Law, a company can only be established by at least two people or more. It seems impossible to agree unless there are two legal subjects, both individuals and legal entities. In its establishment, it must be stated in a notarial deed later ratified by the Ministry of Law and Human Rights of the Republic of Indonesia; thus, this provision can guarantee legal certainty and the company's legal position as a legal entity that is recognized in Indonesia.

Another exciting topic to discuss is regarding the company's organs, where there are no changes to the Job Creation Law even though there is a new term regarding an Individual Company. Heretofore, the same article, namely Article 109 paragraph (1), explains that the company's organs consist of a General Meeting of Shareholders or, in the future, abbreviated as GMS, Directors, and a Board of Commissioners. In an individual company, there is only a single founder. The founder also serves as Director and sole shareholder in the personal company he founded. It becomes a researcher's question of how to hold a General Meeting of Shareholders in an Individual Company if only a single shareholder exists. What about the quorum provisions, which have previously been regulated in detail in the UUPT, and how can Individual Companies make decisions at meetings to reach a consensus or agreement?

Several previous researchers also discussed Individual Companies based on the Job Creation Law. However, none of them focused their research on the procedures for holding GMS; most of them discussed its establishment and capital. Radith, Shandy, and Aafi (2021) in their research discussed changes to the arrangements for establishing a particular company, i.e., an individual company. According to them, simplifying the stages of establishing a PT as a legal entity saves the potential for juridical problems, such as unclear regulations related to the legal basis for various matters regarding PTs and the role of the notary in the establishment of

the individual company. Subsequent research was conducted by Muhammad Faiz Aziz and Nunuk Febrianingsih (2020), which discussed all drafts of the Job Creation Laws but did not explain the holding of GMS in individual companies in detail. They only mentioned that summons for the GMS could be more flexible because there is only a single shareholder in the company. Unlike the two previous research, Shinta (2021) focused more on limited shareholder responsibility for their shares and capital in the new company. In this case, no one has yet discussed the holding of GMS for individual companies based on the latest regulation, i.e., the Job Creation Law, whether this regulation can be considered effective in regulating everything regarding the GMS (RUPS) of Limited Liability Companies.

RESEARCH METHOD

In this research, the authors used the characteristics of normative juridical research that focused on studying various norms and applying several rules in positive law (Ibrahim, 2007). The research was descriptive in nature, which meant that this research aimed to describe specifically and in detail various kinds of characteristics, and symptoms of certain individuals or groups or to determine the spread of a symptom, whether there is a relationship between a symptom and other symptoms in community life (Amiruddin & Asikin, 2004). The research approach employed was the statute approach, i.e., an approach that used regulations and legislation regarding this research issue (Marzuki, 2005). The data collection technique of this research was a document study; the researcher would collect primary and secondary data sources from the literature, namely the regulations for organizing GMS before the existence of Law No. 11 of 2020 concerning Job Creation, which was guided by Law No. 40 of 2007 concerning Limited Liability Companies, a comparison would then be made with the latest regulations on the Job Creation Law, which would be analyzed and studied qualitatively.

RESULTS AND DISCUSSION

1. HOLDING A GENERAL MEETING OF SHAREHOLDERS BEFORE THE PROVISION OF LAW NO. 11 OF 2020 CONCERNING JOB CREATION

Before the birth of the Job Creation Law, all business activities in the company were oriented or referred to the regulations contained in Law No. 40 of 2007 concerning Limited Liability Companies. However, with the presence of the Job Creation Law, there is a new company, an individual company, which is not regulated in the PT Law. Because it is categorized as a legal entity, an individual company also has company organs. In this section, the author tries to review and analyze the provisions of the GMS before the existence of the Job Creation Law.

The General Meeting of Shareholders or commonly abbreviated as GMS is one of the organs of a limited liability company. This organ has authority that is not owned by the other two organs, namely the Board of Directors and the Board of Commissioners (Supramono, 1999). The authority referred to as an example is changing the company's articles of association, increasing authorized capital, merging the company with other companies, or consolidating, taking further steps for the company's benefit, and so on (De Jong et al., 2006).

Article 78 paragraph (1) of the Company Law stated that there are two types of GMS, i.e., the Annual GMS and another GMS or well-known as the Extraordinary GMS. An Extraordinary GMS can be held if deemed necessary and the time is more flexible, while an Annual GMS must be held a maximum of six (6) months after the end of the company's financial year. In the meeting, the Board of Directors, based on Article 66 paragraph (2) of the Limited Liability Company Law, is required to report, such as:

- a. Financial statements contained at least of the balance sheet at the end of the most recent fiscal year in comparison with the previous financial year, profit and loss statements for the relevant financial year, cash flow statements, and reports on changes in equity, as well as notes to these financial statements;
- b. Reports on company activities;
- c. Reports on the implementation of Social and Environmental Responsibility;
- d. Details of problems that arose during the financial year that affected company business activities;
- e. Reports on supervisory duties that the Council Commissioners have carried out during the past financial year;
- f. Names of the Board of Directors and the Board of Commissioners Members;
- g. Salary and allowances for members of the Board of Directors and salary or honorarium and allowances for members of the Board of Commissioners of the Company for the past year.

Based on Article 79 paragraph (1) UUPT, the Board of Directors is an organ that is authorized to hold Annual GMS and Extraordinary GMS. It can be carried out based on the request of a single person or more shareholders who jointly represent 1/10 (one-tenth) or equivalent to 10% (ten percent) of the total number of shares with voting rights or based on the request of the Board of Commissioners (Soekadi & Abdullah, 2021).

Before conducting a GMS, the Board of Directors must summon all shareholders by registered letter or by advertising in newspapers. The summons stated the date, time, place, and agenda of the meeting; all meeting files were available at the company's office until the time of the GMS (Hermanto & Diani, 2022).

Regarding the place where the GMS is held, the UUPT distinguishes it into two types: for a closed limited company, the GMS can be held at the company's domicile, while for an open limited company where many people already own the shares, the GMS can be held at the stock exchange's domicile where the shares of companies are listed. As an exception, if all shareholders with voting rights are present, the GMS can be held anywhere with a note that it is still Indonesian territory (Dharmawan, 2015).

There is a meeting quorum requirement that must be fulfilled in each GMS. The forum quota, shortened to quorum, is the minimum limit for meeting members' attendance (Wahono, 2022). Based on the provisions of Article 86 UUPT that a GMS can be held if the meeting is attended by more than 1/2 (one-half) part or equivalent to 50% (fifty percent) of the total shares with voting rights. This provision does not apply if the company's articles of association require a larger quorum. If it occurs, what is written in the articles of association of the limited liability company shall apply.

2. CONVENING THE GENERAL MEETING OF SHAREHOLDERS AFTER THE PROVISION OF LAW NO. 11 OF 2020 CONCERNING JOB CREATION

After understanding the procedures for implementing the GMS in Law No. 40 of 2007 concerning Limited Liability Companies as mentioned above, we come to the discussion of the GMS on Law No. 11 of 2020 concerning Job Creation. Article 109, paragraph (1) of the Job Creation Law explains a limited liability company, i.e., a legal entity, which is a partnership of capital, established based on an agreement, conducting business activities with an authorized capital, which is entirely divided into shares or individual legal entities that meet the Micro and Small Enterprise Criteria as regulated in the legislation regarding Micro and Small Enterprises.

If we observe from the definition above, there is the word "*agreement*"; According to the Big Indonesian Dictionary (KBBI), it is a written or oral agreement made by two or more parties; each of them agrees to obey what has been agreed in the agreement. In Individual Companies that meet the criteria for Micro and Small Enterprises, there is only a single founder (Article 153A of the Job Creation Law). Indeed, it violates a limited liability company because a company should be established based on the agreement of two or more parties; how can one person set up a company which indeed is a legal entity; Is it possible for someone to agree with himself? It is illogical and certainly raises questions for academics and practitioners in the field of law (Isnaeni, 2021).

A well-known company organ based on Law No. 40 of 2007 concerning Limited Liability Companies, there are three organs, i.e., the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. Each of these organs has different duties, responsibilities, and authorities. One of the obligations of the Board of Directors is to submit the company's annual report to the GMS after the Board has approved the report of Commissioners. UU No. 11 of 2020 concerning Job Creation also states that there are three PT organs as mentioned above with no changes; however, an individual company built by one person has a *one-tier* nature. It means that the company's founder acts as the sole shareholder and serves as a Director without a Board of Commissioners in the company (Isnaeni, 2021).

The author's question: how can a director make an annual report of the company he manages without inspection and approval from the Board of Commissioners, which then report will also be submitted and reported to shareholders who are none other than himself; it becomes strange and cannot be accepted by human reason. If there is a meeting quorum provision in the company law that must be fulfilled; thus, the meeting can be valid to be held. For decision-making, a quorum must also be approved, and if the intended quorum is not met, the conference will become invalid. It will not be found in individual companies because there is only one individual who will carry out the meeting; he is also a shareholder and director of the company at the same time. In the Job Creation Law, no provisions clearly explain the procedures for holding a General Meeting of Shareholders. Provisions regarding financial reporting in line with Article 153F of the Job Creation Law will be regulated in a Government Regulation, which is still unclear. It means that this law still needs improvement, not just creating a new term, i.e., an Individual Company.

3. EFFECTIVENESS OF LAW NUMBER 11 OF 2020 CONCERNING JOB CREATION ON THE IMPLEMENTATION OF GENERAL MEETINGS OF SHAREHOLDERS IN INDIVIDUAL COMPANIES

To assess whether Law Number 11 of 2020 concerning Job Creation described above has been effective in regulating all activities related to limited liability companies, especially the holding of GMS, researchers will link it to Anthony Allot's theory of legal effectiveness. According to his theory, the law will be effective if the purpose of its existence and application can prevent all forms of unwanted actions and can also eliminate the existing chaos (Salim & Septiana, 2013).

Diana stated in her article entitled "*Unraveling the Effectiveness of Law Anthony Allot's Theory* (Cahyaningsih, 2020) that the effectiveness of a statutory regulation can be measured in three ways, namely:

- 1) When regulations become deterrent or preventive, whether the existence of these regulations succeed in preventing legal subjects from prohibited actions;
- 2) When regulations become a solution to existing or curative disputes or problems, whether these regulations succeed in providing a fair solution;
- 3) When regulations provide facilities for legal subjects in carrying out legal or facilitative actions, whether these regulations succeed in providing rules that facilitate their needs.

First, when viewed from a preventive nature, the Job Creation Law has not yet prevented legal subjects; in this case, the founders who serve as shareholders as well as directors of the company, from arbitrary actions. It is reflected in the existence of multiple positions so that the tasks, responsibilities, and authorities of each organ of the limited liability companies are not clear. In addition, in an individual company, the term board of commissioners is not recognized; even though this organ is significant for a company due to an organ of the company whose job is to carry out general and special supervision based on the articles of association and also to provide advice to the Board of Directors regarding the right strategy and steps that must be taken for the smooth running and development of the company. In the absence of a Board of Commissioners in an Individual Company, there is no one to supervise the work of the Directors and whether Article 153D paragraph (2) of the Job Creation Law can be appropriately implemented or not (Putri & Tan, 2022). The connection with holding a General Meeting of Shareholders, i.e., when the Director

of an Individual Company who meets the criteria for Micro and Small Enterprises must prepare a financial report to realize good corporate governance based on Article 153F paragraph (1) of the Job Creation Law, which does not yet clearly stipulate the form of the report. Then, the report must be submitted to those not mentioned at any meeting. In paragraph (2), it only reads that further provisions regarding the obligation to make financial reports are regulated in a Government Regulation, which has not existed until now.

Second, when viewed from a curative nature, the existence of a new term, i.e., an Individual Company, which was born with the promulgation of the Job Creation Law, indeed aims to improve the country's economy and open up investment opportunities in the business world. However, it has not been the right solution because the regulations on the Job Creation Law still hold many legal loopholes, which are certainly the subject of debate among legal experts. Even though the Job Creation Law still adopts the three company organs, the holding of a GMS is not regulated in it; thus, it seems that an individual company can also hold a GMS as a PT in general; indeed, an individual company cannot legally carry it out. Individual companies only have one shareholder and, certainly, the meeting quorum provisions cannot be applied to individual companies.

Third, regulations as providers of facilities, the government should issue regulations that are aligned and not overlapping so that it is expected that legal subjects will receive legal certainty and protection in practice. Starting from the establishment, which is considered easier because it does not require a notarial deed, only a written Indonesian language letter registered with the Ministry of Law and Human Rights of the Republic of Indonesia to the internal organs of an individual company. It is different from what has been written in the Limited Liability Company Law. If the Limited Liability Company Law has regulated in such detail, thus, it obviously can be implemented by all limited liability companies; Not only closed limited companies are regulated, but also companies that have gone public or PT Tek (open) are regulated in such detail; no matter what Laws that regulate the Capital Market in particular. In the Job Creation Law, researchers often find the phrase "further provisions regarding are regulated in a Government Regulation", which heretofore has not existed. It means that the Job Creation Law has not provided facilities in the form of regulations that can become a comprehensive legal umbrella and guarantee legal certainty for legal subjects who establish individual companies or those who wish to establish individual companies, especially for third parties when entering into collaborations or agreements with the individual companies in question.

CONCLUSION

Law Number 11 of 2020 concerning Job Creation has changed various previous regulations; one of which is regarding Limited Liability Companies. If Law Number 40 of 2007 concerning Limited Liability Companies has regulated all provisions regarding companies such as establishment, capital, company organs and their authorities, procedures for GMS and quorum meetings, amendments to the articles of association, consolidation, merger, and liquidation of the company in detail, then it is different from the Job Creation Law, which is still not effective enough in facilitating the needs of legal subjects related to Individual Companies. The Job Creation Law only mentions the Directors of Individual Companies who also serve as the company's sole shareholder, while the Board of Commissioners is omitted. Although there is still a financial reporting obligation by the Board of Directors, it is less objective and less effective because the Board of Commissioners does not examine it in advance and there is no oversight of the performance of the Board of Directors by the Board of Commissioners either. The procedure for holding GMS is also not regulated in the Job Creation Law; there is only a definition of the GMS; so individual companies cannot hold a GMS. It shows that the Job Creation Law has not implemented the principle of legal certainty for individual companies. The Job Creation Law is also seen as ineffective from three sides, namely the preventive, curative, and facilitative sides. As a suggestion for the future, the government should accomplish these legal loopholes so that legal certainty and legal protection for legal subjects and regulations become effective.

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