Vol. 18 No. 3 December 2022

YURISDIKSI

Jurnal Wacana Hukum dan Sains

Universitas Merdeka Surabaya

ISSN print 2086-6852 and ISSN Online 2598-5892

Sole Propriesorship and Limited Liability Company Financial Liabilites To Creditors

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ABSTRACT

The government has issued the Job Creation Law. In the Job Creation Law, micro and small businesses can establish a legal entity company. This company is called a sole proprietorship. The establishment of a sole proprietorship is still difficult to distinguish from establishing a limited liability company based on the Law of the Republic of Indonesia Number 40 of 2007. One thing that becomes the attention of stakeholders is the responsibility of sole proprietorships with limited liability. Stakeholders include creditors of financial institutions. This research uses a normative judicial method. This research object is aims to discuss the disadvantage of sole proprietorships compared to limited liability companies to creditors of financial institutions. The research result is find the differences between a sole proprietorship and a limited liability company. This research concludes that a sole proprietorship with limited liability is the same as that of a limited liability company to creditors of financial institutions. Shareholders are not responsible for ties to individual companies. The board of directors is not personally accountable for respective companies' obligations. A particular company is responsible for relations made on its behalf as a legal entity. Any responsibility includes a credit agreement between the company and a financial institution.

Keywords: Sole Proprietorship; Responsibility; Limited Liability Company

1. INTRODUCTION

Law of the Republic of Indonesia Number 11 of 2020 on Job Creation (UU Cipta Kerja) has made establishing a limited liability company without a notary deed. This limited liability company is a legal entity or also known as a sole proprietorship with limited liability (Biro Humas, Hukum dan Kerjasama, 2021). The government also issued Government Regulation Number 8 of 2021 on the Authorized Capital of the Company and the Registration, Establishment, Change, and Dissolution of the Company (Pebrianto, 2021a).

This arrangement aims to facilitate micro and small enterprises (UMK) in carrying out their business activities. The Job Creation Law simplifies the establishment of companies to enable investment and license, especially for SMEs. The Job Creation Law introduces a legal entity called an individual company (PP). This company registration affects taxation. The government needs to conduct socialization to businesses, especially Small Medium Entreprises (SMEs), regarding respective companies (Waseso, 2021). Government Regulation Number 8 of 2021 has regulated provisions regarding establishing an individual limited liability company for micro and small businesses (CNN Indonesia, 2021). The establishment of a sole proprietorship will obtain several conveniences, such as lower taxes, payment tenor for a particular time, establishment without a

ISSN print 2086-6852 and ISSN Online 2598-5892

notary deed, legal protection, and can be established with only one owner or single shareholder or one-tier (Pebrianto, 2021b).

A limited liability company (PT) is a capital agreement or association involving two or more parties who own the capital. The entities of the limited liability company consisting of the General Meeting of Shareholders (GMS) as the highest authority of the limited liability company, the board of directors, and the board of commissioners. In bankruptcy, the board of directors can be held accountable if the board of directors has made a mistake or negligence in running the limited liability company (Harahap, 2008).

The responsibilities of the board of directors of a limited liability company consisting of duties to internal and external parties. Responsibilities to internal parties include the commitment of the board of directors to the company and the shareholders of the limited liability company. Responsibilities to external parties include the board of directors' duty to third parties related to the law with a limited liability company (Kurniawan, 2012). Third parties include creditors in the form of financial institutions. The board of directors of a limited liability company has responsibility for implementing the day-to-day management of the company and the company's operational management (wauda, 2019). In a limited liability company, four parties can be responsible for the losses caused by the company. The four parties, namely the shareholders of the limited liability company, the board of directors, the board of commissioners, and the independent limited liability company as legal subjects (Supriyatin, 2020). Limited liability company also has a social responsibility to the environment and the surrounding community (Nugraha et al., 2018).

The board of directors must have good faith and be full of responsibility in carrying out their duties in the company's interests. This responsibility is called a fiduciary duty. The board of directors can be held accountable if they abuse their power (Yanuarsi, 2013). Abuse of responsibility includes making decisions that result in conflicts of interest. The responsibility of the board of directors and the commissioners to third parties for the policies they take applies jointly and severally unless the board of directors and commissioners can prove that the loss, negligence, or error is not a fault for their management actions (Indrapradja, 2018). The responsibility itself is the responsibility of the directors and commissioners individually. Joint responsibility is a collective responsibility between the board of directors and other directors or the board of directors and members of commissioners. This responsibility includes bankruptcy which resulted in the limited liability company being unable to pay off its obligations to creditors of financial institutions.

However, the board of directors does not need to be responsible for their actions on behalf of the company based on their authority. The directors' actions are the actions of the company, which are acts of independent legal subjects. The company is responsible for the actions of the

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company itself, not the responsibility of the directors personally. The board of directors can prove that the decision not taken does not contain negligence and intentional error. The board of Directors has made maximum efforts to reduce the losses of limited liability companies—directors who have been negligent and made mistakes due to committing acts against the law. Negligent directors must be responsible for the loss of a limited liability company (Gea at al., 2020). Legal responsibility for a limited liability company that is not yet a legal entity is the responsibility of the shareholders (Listyowati, 2015). A limited liability company that has not obtained a legal entity is a limited liability company that is still waiting for approval from the Ministry of Law and Human Rights. Every transaction made during this period is the responsibility of the shareholders.

This research examines liability by individual companies compared to limited liability companies, especially to creditors of financial institutions. A sole proprietorship is a new form of a legal entity rather than a business entity, especially SMEs. Many parties (stakeholders) are still confused about the status of sole proprietorships, especially creditors of financial institutions. This research explains the differences and responsibilities of a sole proprietorship and a limited liability company. Research discussing sole proprietorships is still rare because sole proprietorships are still a new form of legal entity or business entity in Indonesia.

This research is unique by discussing a sole proprietorship compared to a limited liability company. A limited liability company is a new form of business in Indonesia since the 2020 Job Creation Act. This research fills the knowledge gap regarding the financial accountability of individual companies to creditors.

2. RESEARCH METHOD

The research uses a normative juridical method. The normative analysis begins by studying the liability of limited liability companies and sole proprietorships per the laws and regulations. This research examines primary and secondary materials. Primary materials are materials obtained directly related to individual company research. The primary material is data or information regarding entities liability in limited liability companies and respective companies. Secondary materials are research materials in the form of applicable laws and regulations, namely the Republic of Indonesia Number 11 of 2020 on Job Creation and the Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Companies.

In this research, the first stage begins with studying materials related to the liability of individual companies and limited liability companies by identifying research materials related to the research theme. Inventory of materials consists of primary materials, secondary materials, and tertiary materials. Secondary legal materials are materials that explain primary materials, such as books, reports, and others. Tertiary materials serve as secondary instructions, such as information

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ISSN print 2086-6852 and ISSN Online 2598-5892

on the internet as additional information related to corporate responsibility (Johan & Ariawan, 2021).

3. RESULTS AND DISCUSSIONS

A sole proprietorship is established by an individual or one party, while a limited liability company based on Law no. 40 of 2007 is found by a minimum of 2 (two) persons or parties. Sole proprietorships are regulated in Government Regulation Number 8, the Year 2021. The enstablishment of an Sole Proprietorship is more easy between a limited liability company based on Law no. 40 of 2007 such as establishment without a notary deed, legal protection, and can be established with only one owner or single shareholder or one-tier. A limited liability company is an agreement or engagement of 2 (two) parties establishing a business. Both types of companies have the same shareholder liability. Shareholders are not personally responsible for the arrangements made on behalf of the company. The responsibility of shareholders is limited to investments invested in shares.

Table 1. Difference between Sole Proprietorship and Limited Liability Company

No.	Item	Sole Proprietorship	Government Regulation Number 8 / 2021	Limited Liability Company	Limited Liability Company Law Number 40/2007
1.	Sharehold ers	1 (one) person	Article 2, Article 9 Government Regulation No. 8/2021	Minimum 2 (two) people	Article 17
2.	Entities in the Company	General Meeting of Shareholders, Directors	Article 109 Job Creation Law	General Meeting of Shareholders, Board of Directors, and Board of Commissioner s	Article 1
3.	Sharehold	Shareholders are	Article 109 Job	Not	Article 3

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	er Responsibilities	not personally responsible for the engagement on behalf of the company	Creation Law	responsible for the engagement made by the company	
4..	Authorized Capital issued and fully paid	25%	Article 4 Government Regulation No. 8/2021	25%	Article 33
5.	Minimum Authorized Capital	Not regulated (according to statutory regulations)	Article 5 Government Regulation No. 8/2021	IDR 50,000,000,-	Article 32
6.	Company Founder Nationality	Indonesian	Article 6 Government Regulation No. 8/2021	Unregulated	
7.	Establishment	1 Company Per Year	Article 109 Job Creation Law	Unregulated	
8.	Type of business	Micro and Small Enterprises	Article 9 Government Regulation No. 8/2021	Unregulated	

Source: Research Result

The limited liability company entities have been regulated in the Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Company. The entities of a limited liability company consisting of the general meeting of shareholders, the board of directors, and commissioners. The board of commissioners does not regulate the sole proprietorship. The functions of the board of directors in a sole proprietorship and a limited liability company are the same. The Board of Directors has the task of running the company daily. The board of directors is responsible for the company's operational activities.

A sole proprietorship does not have a minimum capital limit, while a limited liability company has a minimum capital limit of IDR 50 million. Placement of authorized and fully paid-up capital for sole proprietorships and limited liability companies is the same, namely 25%. The

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founder of a sole proprietorship must be an Indonesian, while a limited liability company can be established by Indonesian and with foreign nationals. In addition, a limited liability company can also become a shareholder of another limited liability company. These ownership provisions are regulated in different regulations based on the characteristics of each industry. The establishment of a sole proprietorship can only be established once per year. Each individual or person can only establish one individual company per year. The type of business for a sole proprietorship is the type of micro and small business. Micro-enterprises have a business capital of up to IDR 1,000,000,000.00 (Indonesia one billion rupiahs), small business has a business capital of more than IDR 1,000,000,000.00 (one billion rupiah) up to a maximum of IDR 5,000,000,000.00 (five billion rupiah). This business capital does not include land and buildings for business premises. In addition to the criteria for working capital, micro-enterprises have annual sales up to a maximum of IDR 2,000,000,000.00 (two billion rupiah). Small businesses have annual sales of between Rp. 2,000,000,000.00 (two billion rupiah) to Rp. 15,000,000,000.00 (fifteen rupiahs). This classification is based on Government Regulation Number 7 of 2021 on the Convenience, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises.

Shareholders in sole proprietorships and limited liability companies are liable to the extent of the shares invested. Shareholders are not responsible for the engagement on behalf of the company. The company is responsible as a legal entity for all arrangements carried out in its name.

The liability of a limited liability company and an individual company to third parties has similarities. The liability of the company is a separate responsibility from the shareholders. Shareholders are only responsible for the investment of shares paid to the company's capital. This liability includes liability to creditors of financial institutions. This responsibility can involve shareholders if shareholders provide guarantees, such as personal guarantees.

The directors are responsible for running the company, both an individual company and a limited liability company. The directors are not personally liable for the company's management unless the directors have been negligent or have abused power delegated to them. The board of commissioners is not explained in individual companies.

Thus, a sole proprietorship operating in the micro and small sector has the same responsibilities as a limited liability company. The difference between the two companies lies in the entities in the two companies. A limited liability company has more complete entities than a sole proprietorship. A limited liability company is not required to have a supervisory board or a board of commissioners based on the law (Pebrianto, 2021a). In the absence of a supervisory board, individual companies are managed by someone like a sole proprietorship.

Sole proprietorships have a smaller and limited business capacity. The risk of loss to a sole proprietorship becomes smaller in the event of a default or bankruptcy. Bankruptcy risk in a sole

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proprietorship is the company's responsibility if the directors have optimally managed the company without a conflict of interest.

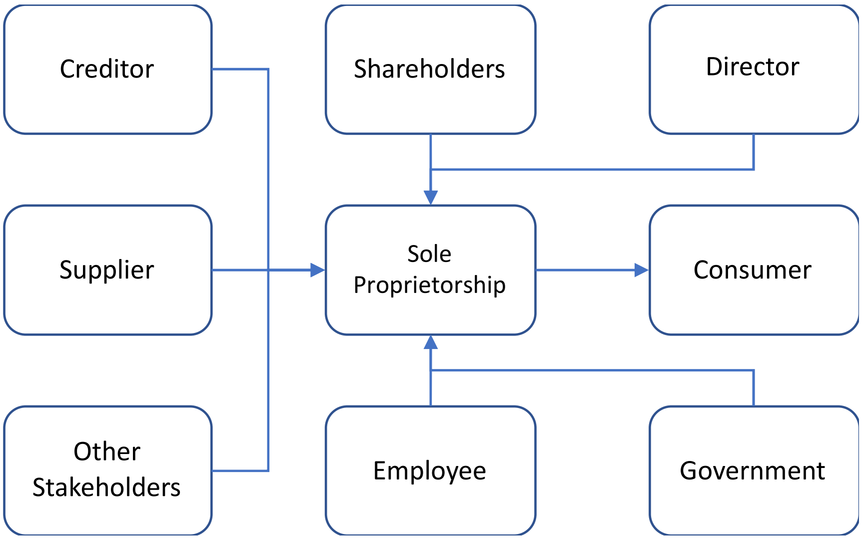

Figure 1 *Company Stakeholders*

A business that is run cannot be separated from the interests of stakeholders. Stakeholders are parties who support the running of the company's business. Stakeholders consist of shareholders, employees, government, creditors of financial institutions, suppliers, the public, and others. For stakeholders, a sole proprietorship is a unique feature. A sole proprietorship or individual company cannot be separated from the owner's assets and liabilities, including a trading company. If the sole proprietorship is in default, the stakeholders can file a claim against the owner.

Meanwhile, in a sole proprietorship, the stakeholders cannot claim ownership of the company. Stakeholder relationships are depicted in Figure 1. For stakeholders, shareholder responsibility becomes a crucial risk. For creditors of financial institutions, this is a particular condition. Creditors will ask for additional guarantees or guarantees from individual shareholders in the form of personal guarantees. Thus, financial institutions still have the same conditions between respective companies and sole proprietorships. In the event of a loss, the financial institution will still submit a claim to the shareholders.

The creditor's position will have the same conditions with an additional guarantee in the form of a personal guarantee. For shareholders, the provision of personal guarantees makes no difference between individual companies and individual companies. Creditors will always look for ways to channel credit in the safest position. A secure placement can be in the form of loan guarantees, including personal guarantees from the company owner.

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Thus, creditors or financial institutions that provide loans to individual companies must pay attention to the guarantees provided compared to other promises. Creditors cannot charge shareholders or owners if there is no personal guarantee or mistakes in managing the company's activities. This error can be filed if the board of directors or management of the company is a shareholder. On the other hand, other stakeholders also have different positions between private companies and individual companies. The role of the supplier is the same as that of the creditor. Suppliers must also pay attention to sales turnover and the business of a sole proprietorship. The entry of supplier goods must pay attention to the cash flow of a sole proprietorship. If the turnover of the sole proprietorship is not good, then there is the potential for default.

The previous research say that the establishment of a sole proprietorship will obtain several conveniences, such as lower taxes, payment tenor for a particular time, establishment without a notary deed, legal protection, and can be established with only one owner or single shareholder or one-tier. But on this research we get that result is the Limited liability companies have a better monitoring system in addition to the amount of capital they have. A limited liability company has more wealth than a sole proprietorship. A sole proprietorship has little money and a more negligible business activity than a limited liability company. Stakeholders must pay attention to the capital and size of the company in dealing with sole proprietorships.

4. CONCLUSION

The shareholders of a sole proprietorship have the same liability characteristics as a limited liability company. Sole proprietorships have ease of establishment. Sole proprietorships are created specifically for micro and small businesses. The ease of establishing a sole proprietorship has several advantages compared to a sole proprietorship or individual company. Sole proprietorships do not have a supervisory board. Creditors of financial institutions have different risks between respective companies and sole proprietorships. Creditors of financial institutions need to ask for additional guarantees for their loans. Further research can be developed by obtaining views from stakeholders. By accepting their ideas, this research will be more complete in discussing the liability of sole proprietorships. Further research can also include the calculation of the convenience obtained with cost savings that must be incurred. Estimation of costs and benefits is compared to the liability received.

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