

EXISTENCE AND CHARACTERISTICS OF SOLE PROPRIETORSHIP IN INDONESIA

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Abstract

Sole proprietorship is the simplest business form and most used for Micro, Small and Medium Enterprises that has been dominating Indonesia's economy. Sole proprietorship wasn't a legal entity, therefore it has an unlimited liability. This become a consideration for entrepreneurs when they start a business. The issue discussed the existence and characteristics of sole proprietorship in Indonesia after Law 11/2020. This is a normative juridical research through a statutory and conceptual approach. The purpose of this research is to explain the characteristic of sole proprietorship in Indonesia and compares it with other Asian countries. The result indicates that sole proprietorship based on Law 11/2020 is a new legal entity as the concept expansion of Limited Liability Company with a limited liability that meets the criteria of micro and small business. It provides legality for entrepreneurs and a facility to access sources of funding. The regulation that determines sole proprietorship as a legal entity is only adopted by few countries like India.

Keywords: *Sole Proprietorship; Limited Liability; Legal Entity*

1. Introduction

The rapid growth of Indonesia's economy encourages the entrepreneurs to continue developing their business activities through various form of business in order to gain benefit as much as possible. All kinds of business form are an option for the entrepreneurs before they start their business. One of the options for the entrepreneurs for starting a business is sole proprietorship. Sole proprietorship is the simplest form of business that is founded by one person who has enough fund to run a business activity.¹ Unlike the other form of business such as Limited Liability Company and Commanditaire Venootschap, sole proprietorship was not a legal entity because it refers to someone who owns a business and is responsible for the risks. Although sole proprietorship was not a legal entity, as one of the business form, sole proprietorship is still a subject of taxation based on the tax regulations.² Law 3/1982 of Company Registration Compulsory explains sole proprietorship in article 6 paragraph (1) as : "Every small individual company that runs by an entrepreneur or by employing family member and does not require a business license and is not a legal entity or a partnership."

¹ Andi Rahmat Heriawan, "Studi Perbandingan Perusahaan Perseorangan (Sole Proprietorship) Dan Koperasi (Cooperative) Pada Negara Laos & Indonesia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 4, no. 4 November (2020), page 32.

² Budi Santoso, "Existence of Sole Proprietorship in Business Activities in Indonesia," *International Journal of Scientific and Technology Research* 9, no. 1, Januari (2020), page 1648.

Sole proprietorship as business form is often used by Micro, Small, and Medium Enterprises that quite dominates Indonesia's economy compared to larger business form. Based on Ministry of Cooperatives and Small and Medium Enterprises' report in 2018, Micro, Small, and Medium Enterprises absorbed up to 97% from total of labor, provided up to 99% from total of employment, contributed 61,07% from total of Gross Domestic Product, and 60,42% from total of investment compared to larger business form.³ This big potential that Micro, Small, and Medium Enterprises holds in contributing Indonesia's economy is one of the reasons for the enactment of Law 11/2020 of Job Creation. At the beginning of the pandemic in 2020, Micro, Small, and Medium Enterprises weakened by contributing 37,3% to the Gross Domestic Product and 73% to the labor absorbent. These number quickly increase with the help of Government's economic stimulus in 2021 and went up to 61,9% contributing the Gross Domestic Product with labor absorption reached 97%.⁴ Before Law 11/2020 of Job Creation, World Bank stated that formal Micro, Small, and Medium Enterprises as legal entities that are officially registered contributed up to 45% from total of employment and 33% from GDP in growing countries. Those number does not include informal Micro, Small, and Medium Enterprises that are not legal entities and not officially registered.⁵ The Government through Law 11/2020 of Job Creation provides a legal basis for the existence and activities of sole proprietorship, that has never existed before in Indonesia, as well as providing an easy way for Micro, Small, and Medium Enterprises in sole proprietorship as a new legal entity with limited liability. This new regulation is a new breakthrough that provides an easy way and opportunities for Micro, Small, and Medium Enterprises actors to restore their economic condition that is affected by COVID-19 pandemic.⁶ There are two previous paper that has discussed sole proprietorship as the newly limited liability company. First, Ratna Januarita conducted research in 2021 which concludes that the absence of regulation on liability create ambiguity and legal uncertainty on the

³ Shinta Pangesti, "Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19," *Jurnal Rechts Vinding* 10, no. 1 April (2021), page 119.

⁴ Direktorat Jenderal Perbendaharaan, "Majalah Treasury Indonesia," *Kementerian Keuangan Republik Indonesia* (Jakarta, 2022), page 6.

⁵ The World Bank, "Small And Medium Enterprises (SMEs) Finance: Improving SMEs' Access to Finance and Finding Innovative Solutions to Unlock Sources of Capital," accessed January 18, 2022, <https://www.worldbank.org/en/topic/sme/finance>.

⁶ Wiwin Budi Pratiwi, "Individual Companies as New Legal Entities in Law Number 11 of 2020 on Job Creation," *Nurani Hukum* 4, no. 1, Juni (2021), page 11.

appropriate liability for the new form of company.⁷ Second, Shinta Pangesti also concludes in her research that in future, the Government should strengthening the regulation about business that meets the criteria as Micro, Small, and Medium Enterprise.⁸ This paper will discuss furthermore about sole proprietorship before and after the enactment of Law 11/2020 of Job Creation and how are the comparison with other Asian countries to see other similarities related to the regulations of sole proprietorship as a business entity and legal entity.

2. Method

This paper uses a normative juridical research method with a statutory approach and conceptual approach. The normative juridical research method is a process to find regulations, legal principles, and legal doctrines.⁹ The statutory approach is used to reviewed all regulations related to the legal issue that are being discussed. In this case, Law 11/2020 of Job Creation and the other relevant regulation are conducted to dig further into sole proprietorship in Indonesia, as well as the comparison in other Asian countries like India, Thailand, Malaysia and Laos. The results are explained through an analytical descriptive method using qualitative datas through the regulations, books and journal from previous research. The obtained results will be analysed qualitatively to draw a deductive conclusion.

3. Results and Discussion

3.1. Sole Proprietorship Before and After Law 11/2020 of Job Creation

Ever since Law 11/2020 of Job Creation officially enacted, at least 80 regulations in Indonesia have been affected, one of them is Law 40/2007 of Limited Liability Company. A few articles in Law 11/2020 of Job Creation amending and add several articles in Law 40/2007 of Limited Liability Company. The fundamental amendment that can be seen is the expansion of the limited liability company concept, by adding a new clause regarding to individual legal entity that meets the criteria of micro and small business. This can be interpreted that a new legal entity appears in the definition of limited liability company in Indonesia, which is commonly known as a sole proprietorship. A sole proprietorship is a popular alternative option of business form that

⁷ Ratna Januarita, "The Newly Sole Proprietorship as Limited Liability Company in Recent Indonesian Company Law," *MIMBAR: Jurnal Sosial Dan Pembangunan* 37, no. 1 (2021): 1–12, <https://doi.org/10.29313/mimbar.v37i1.7771>.

⁸ Pangesti, "Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19."

⁹ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Depok: Prenadamedia Group, 2016), page 124.

often used by Micro, Small, and Medium Enterprises actors in Indonesia because of their easy establishment, simple regulations and their flexibility compared to other business forms. The easy establishment and simple regulations of sole proprietorship before Law 11/2020 of Job Creation are mainly caused of the absence the regulations that specifically arrange sole proprietorship in Indonesia regarding to the procedure for establishment, taxes, and liquidation in a condition of bankruptcy with personal asset. In other words, there are minimum requirements and documents that must be fulfilled by sole proprietorship in Indonesia, this also leads to minimum spent of capital and cost that has to spent during the establishment process of sole proprietorship. The cost that was spent during the establishment process of sole proprietorship is the cost of notary service in order to make a deed of business establishment, as well as administrative cost for business license. However, even if sole proprietorship is not a legal entity and specifically not regulated in Indonesia, sole proprietorship is still required to pay an income tax which applies to all business forms in Indonesia.¹⁰ A sole proprietorship's profits are taxed as the sole owner's personal income. The sole owner should pay estimated taxes on his or her self-employment income according to the tax calculation and provision on Law 36/2008 of Income Tax.¹¹

Henry R. Cheesemen mentions that sole proprietorship is a business form which the sole owner and founder is the real business. This is why sole proprietorship is not a legal entity. Sole proprietorship carries out their business activities under the label of "doing business as" which refers and uses the name of the sole owner or a specific trade name that has been chosen. If a sole proprietorship uses a specific trade name as the business name, the trade name does not indicate the sole proprietorship as a legal entity that separates from the sole owner. Although the sole proprietorship is only owned by a one person, sole proprietorship can be run by several persons as the employees. In practice, the sole owner can delegate some of his or her authority to the employees. But this does not affect the authority of decision making, which is still within the sole owner's authority. On the other side, the existence of the sole proprietorship solely depends on the existence of the sole owner if he or she is not in a serious ill or die. Even if the sole owner can delegate his or her authority, it is possible that the sole proprietorship will stop operating in the future. In some cases, the sole owner can nominate someone to represent him or her to keep the business continuity. This situation also has an impact which can hampered the business

¹⁰ Santoso, "Existence of Sole Proprietorship in Business Activities in Indonesia.", page 1647.

¹¹ Julia Rittenberg, Jane Haskins, and Rob Watts, "What Is A Sole Proprietorship?," *Forbes Advisor*, accessed November 1, 2022, <https://www.forbes.com/advisor/business/what-is-a-sole-proprietorship/>.

activities if all the sole proprietorship decision are highly depends on the sole owner. Furthermore, the centralization of all decisions and activities of sole proprietorship only on the sole owner creates a lack of diversity in viewpoints and approaches when operating a business. All of the sole proprietorship's decisions and activities become centralized and monolisted on the sole owner.¹²

One of the main characteristic of the sole proprietorship is that there is no separation of assets and debts owned by the sole owner in the sole proprietorship. The sole owner is entitled to all the profits that the sole proprietorship earned, but at the same the sole owner is also fully responsible for all the risks that is related to the sole proprietorship. On the other hand, the sole proprietorship tends to have a difficulty to access funding sources from Banks or foreign investors due to the higher risk of loss compared to the other business forms like limited liability company which is a legal entity. This certainly become a big consideration for all the Micro, Small, and Medium Enterprises actors in Indonesia in order to choose a business form for their business. World Bank considers that Micro, Small, and Medium Enterprises will become more stable to operating their business if the business is a legal entity. Operating a business with a business form that considers as legal entity will get a better and easier access to all the funding sources, higher profits, as well as increasing the state taxes.¹³ . Limited liability company as a legal entity has a large capacity to raise more funds because it was created by corporate law. Corporate law allows people to invest their money on limited liability company without being burdened of the unlimited liability and also free from the responsibility to manage the business. A lot of people are willing to invest large amounts of money on limited liability company because they are only burdened with limited liability based on how much they invest their money on the company. In contrary, very few people are willing to invest their money in business forms with unlimited liability because it contains a higher risk to the investors.¹⁴ In order to accommodate the interest of Micro, Small, and Medium Enterprises on sole proprietorship form to improve Indonesia's economy, the Government through Law 11/2020 of Job Creation which regulate that the sole proprietorship is a new legal entity in the limited liability company. Furthermore, the sole proprietorship as a new legal entity is regulated in Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and

¹² Santoso, page 1648.

¹³ Fahrurrozi Muhammad, "Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, Dan Menengah Berbadan Hukum Dengan Gagasan Pendirian Perseroan Terbatas Oleh Pemegang Saham Tunggal," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 7, no. 3, Desember (2018), page 455.

¹⁴ Yahya M. Harahap, *Hukum Perseroan Terbatas* (Jakarta: Sinar Grafika, 2016), page 70-71.

Dissolution of Companies that Meets the Criteria of Micro and Small Businesses. The differences in substance between Law 40/2007 of Limited Liability Company and Law 11/2020 of Job Creations are shown in Table 1.

Not all sole proprietorship can become a legal entity just as mentioned in the new definition of limited liability companies in Law 11/2020 of Job Creation, only sole proprietorship that meets the criteria of micro and small businesses in accordance to Law 20/2008 of Micro, Small, and Medium Enterprises. Micro business is a business with a maximum net worth of 50 Million IDR that does not including land and buildings for the business' needs, as well with the maximum annual sales of 300 Million IDR. Meanwhile, small business is a business with a net worth between 50 Million IDR to 500 Million IDR that does not including land and building for the business' needs, as well with the annual sales between 300 Million IDR to 2,5 Billion IDR. Sole proprietorship that has met the criteria of micro and small business above, they can electronically register their business as the newest legal entity of limited liability company to the Ministry of Law and Human Rights. Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses attach documents form that must be filled by the sole proprietorship when registering to the Ministry of Law and Human Rights, which consists of: a) Name and domicile of the sole proprietorship; b) Period of establishment of the sole proprietorship; c) Purpose and goals of the sole proprietorship's business activities; d) Total of authorized capital, issued capital, and paid-up capital; e) Nominal value and total number of shares; f) Address of the sole proprietorship; and, g) Full name, place and date of birth, occupation, place of residence, Single Identity Number and Taxpayer Identification Numbers of the founder(s) as well as Directors and the shareholders of the sole proprietorship.

The legal entity status of the sole proprietorship must be changed to a limited liability company if the shareholders become more than one person (other than the founder), and when the sole proprietorship is no longer meets the criteria of micro and small business accordance to Law 20/2008 of Micro, Small, and Medium Enterprises. Accordance to Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses, only Indonesian citizens who are over 17 years old and proficient in law can establish the sole

proprietorship in Indonesia. This is different from limited liability company, where both Indonesian citizens and foreign citizens can establish limited liability company in Indonesia.

A conventional sole proprietorship has an unlimited liability to the sole owner's private asset that contains a high risk. However, since the regulation of the sole proprietorship as the new legal entity in Law 11/2020 of Job Creation, the sole proprietorship's unlimited liability changed into limited liability like a limited liability company as a legal entity. Law 11/2020 of Job Creation inserts Article 153A to Article 153J in Law 40/2007 of Limited Liability Company. Article 153J explicitly states that the shareholders of the sole proprietorship that meets the criteria of micro and small business are not personally responsible for the engagement made on behalf of the sole proprietorship, also the shareholders are not responsible for the sole proprietorship's loss that exceed the owned shares. In other words, the sole owner and the Director who owns the sole proprietorship's shares do not need to worry about his or her personal assets. If the sole proprietorship endures a loss, then the loss is resolved from the sole proprietorship's asset and does not involve the sole owner's asset. Those explanations are the meaning of the principle of "continuity of existence" in business form as a legal entity that strictly separate private's asset with the company's asset.¹⁵

The separation of the sole owner's responsibility with the sole proprietorship's responsibility can only happen if the sole proprietorship's has become an independent legal subject that possess rights and obligations according to the regulation. To become a legal subject, the sole proprietorship has to register the business to the Ministry of Law and Human Rights if the business already meets the criteria of micro and small business according to Law 20/2008 of Micro, Small, and Medium Enterprises. The separation between the private asset and the sole proprietorship's asset is reflected in *Salomon v Salomon & Co Ltd* case back in 1987 which limited the liability of the shareholders only to the shares they owned in order to give protection. This famous case introducing the principle of separate legal entities in the world of corporate law.¹⁶ Later on, this principle relates to the principle of Piercing the Corporate Veil that eliminates the limited liability under certain conditions, namely:¹⁷ a) The company is no longer meets the criteria as a legal subject; b) The related shareholder, either it's directly or indirectly, has a bad faith to took advantage of the company for personal's benefit; c) The related

¹⁵ Ridwan Khairandy, "Karakter Hukum Perusahaan Perseroan Dan Status Hukum Kekayaan Yang Dimilikinya," *Jurnal Hukum Ius Quia Iustum* 20, no. 1 (2013): 81–97, <https://doi.org/10.20885/iustum.vol20.iss1.art5>, page 89.

¹⁶ Yafet Yosafet W. Rissy, "Doktrin Piercing the Corporate Veil: Ketentuan Dan Penerapannya Di Inggris, Australia Dan Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 1, Oktober (2019), page 4.

¹⁷ Harahap, *Hukum Perseroan Terbatas*, page 77.

shareholder is involved to unlawful acts committed by the company; and, d) The related shareholder, either it's directly or indirectly, illegally used the company's assets that leads the company unable to pay off the company's debts.

Both sole proprietorship and limited liability company as legal entities are created through a process based on law, therefore their dissolution must go through a legal process as well. According to Law 40/2007 of Limited Liability Company, a dissolution is a way to stop business activities that carried out with the legal entity status that still exists. The dissolution of sole proprietorship will lose its legal entity status if the liquidator's responsibility or the final result of the liquidation process is accepted by the General Meeting of Shareholders or the District Court. Even though the legal entity status still exists, the sole proprietorship's business activities accordance to purpose and goals in the sole proprietorship's establishment statement has stopped completely. The legal basis for the dissolution of the sole proprietorship according to Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses are exactly the same as the dissolution of the limited liability company in Law 40/2007 of Limited Liability Company. The causes for the dissolution of the sole proprietorships that are justified by law are consist of: a) The decision of the shareholders of the sole proprietorship which has the same legal force as the General Meeting of Shareholders; b) The period of establishment in the statement of establishment of the sole proprietorship or amendments has expired; c) Court decision; d) Revocation of bankruptcy based on a decision of the Commercial Court which has a permanent legal force, and the bankruptcy assets of the sole proprietorship is not enough to pay the bankruptcy costs; e) The bankruptcy assets of the sole proprietorship that have been declared bankrupt are in state of insolvency according to Law 37/2004 of Bankruptcy and Suspension of Debt Payment Obligations; and, f) Revocation of the business license of the sole proprietorship that leds to liquidate by fill out a statement of dissolution.

During the process of dissolution, the sole proprietorship cannot make legal actions any longer even though it's legal entity status is still exists. If this provision is violated by the Director and/or the sole owner, the sole proprietorship's limited liability becomes unlimited for the violation. This provision also applies to members of the Board of Directors and members of the Board of Commissioners in limited liability company according to Article 142 of Law 40/2007 of Limited Liability Company. If the dissolutions based on the decision of the

shareholders of the sole proprietorship which has the same legal force as the General Meeting of Shareholders, the period of establishment in the statement of establishment of the sole proprietorship, or revocation of bankruptcy based on a decision of the Commercial Court which has a permanent legal force, then the dissolution of the sole proprietorship must be followed by liquidation by the liquidator. During the process of finishing the dissolution, the sole proprietorship has the status of “in progress”, which according to Article 143 paragraph (2) of Law 40/2007 of Limited Liability Company is called a company “in liquidation”. The word “in liquidation” must be included behind the sole proprietorship’s name and every company’s outgoing letter.¹⁸

Government Regulation 8/2021 of Company’s Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses regulates the sole proprietorship’s obligations to make financial reports in order to actualize the good corporate governance. The financial statements according to Article 10 paragraph (3) contain statements of financial position, statements of profit or loss, and notes to financial statements to the current year that must be electronically reported to the Ministry of Law and Human Rights no later than 6 months after the end of the current accounting period. If the sole proprietorship does not report the financial statements according to Article 10 Government Regulation 8/2021 of Company’s Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses, it will be charged to administrative sanctions such as written warning, discontinuation of right access to services and/or revocation of the legal entity status. The financial statements are arranged by the sole owner who is also the shareholder and Director of the sole proprietorship. Director in the sole proprietorship has the same duty and responsibility just like Director in limited liability company, which is to manage the company to gain benefits and profits according to the company’s purposes and goals. Director also has the power to manage the company according to policies that considers appropriate, within the limits that were regulated specifically in the relevant regulations, as well as in the statement of establishment of the sole proprietorship.¹⁹

The presence of the sole proprietorship in Law 11/2020 of Job Creation which combines the sole owner as the shareholder and Director as an one-tier organ can cause confusion in

¹⁸ Harahap, page 556.

¹⁹ Pangesti, “Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19.”, page 124.

understanding the 3 main organs of limited liability company in Law 40/2007 of Limited Liability Company.²⁰ The 3 main organs are Board of Directors, Board of Commissioners, and General Meeting of Shareholders. Each organ has their own duty, roles, and functions that are explicitly regulated in Law 40/2007 of Limited Liability Company. The Board of Commissioners is in charge of supervising in general and specifically regarding to the management of the limited liability company, and also providing advices to the Board of Directors. The absence of the Board of Commissioners in the sole proprietorship according to Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses can be interpreted as the vanishing of an important supervisory element in the basic concept of limited liability company. Just like the Board of Commissioners, the General Meeting of Shareholders is not mentioned as well as an organ in the sole proprietorship according to Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses. The legal force of General Meeting of Shareholders in limited liability company is the same as the decision of the sole owner as the shareholder in the sole proprietorship concerns to changing and dissolving the sole proprietorship. This condition raises new problems regarding the concept of the General Meeting of Shareholders. Law 40/2007 of Limited Liability Company regulates the General Meeting of Shareholders as an organ of the company with an authority that is not given to the Board of Directors and the Board of the Commissioners, whereas the sole proprietorship according to Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses combining the authority of the General Meeting of Shareholders with the Board of Directors in one person only. Some of these confusions need to be addressed again, which both in Law 11/2020 of Job Creation and Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses do not provide a definition of the sole proprietorship.

The Government tried to combine the concept of limited liability company with the sole proprietorship by using their both advantages to gain more benefits but with easier establishment process. Limited liability company has a stronger legal stand compared to the other business

²⁰ Anggreany Arief and Rizki Ramadani, "Omnibus Law Cipta Kerja Dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 6, no. 2, Juli (2021), page 115.

form, while the sole proprietorship is flexible, has simple characters when it comes to establishment process, and less costs to spend. Although it is possible to combine both concepts of business forms, this implicates a contradictions in the basic concept of limited liability company and difficulties in identifying it with the sole proprietorship.²¹ The centralization of positions and duties on the sole owner of the sole proprietorship who is also the shareholder and Director creates the absence of check and balance system in limited liability company through the 3 main organs of the company. There is no second party to give advices, so the sole owner must stay cautious while runs the business activities of the sole proprietorship. The centralization of positions and duties to one person is to facilitate and accelerate the sole proprietorship's company decision making. This condition is possible to create an abuse of power and corrupt behavior that can harm Creditors or other parties.

3.2 Sole Proprietorship in Asian Countries

Apart from Indonesia, the sole proprietorship's characteristics in other Asian countries are not much different from the conventional sole proprietorship. In general, the conventional sole proprietorship is owned by sole owner with unlimited liability. Most countries do not specifically regulate the sole proprietorship's existence and activities, so it can be interpreted that the majority of the sole proprietorship as a business form is not a legal entity. The sole proprietorship in Thailand is commonly used as a business form that is operated by 1 person with unlimited liability. Although it is not regulated in state regulations as a legal entity, the sole proprietorships in Thailand are popular and widely used in the e-commerce sector. Meanwhile in Malaysia, the sole proprietorship is a business form regulated in the Registration of Business Act 1956 which is used by Micro, Small, and Medium Enterprises to contribute expanding job opportunities and increasing a higher national's income. Despite of being regulated in state regulation, the sole proprietorship in Malaysia is still not a legal entity, so the liability is also not limited.²² The same thing also happened in Laos, where the sole proprietorship is regulated in the Lao People's Democratic Republic Enterprise Law 2013 as a business form founded by 1 person and has a full responsible for all the company assets (unlimited liability). Not much different from Malaysia, although the sole proprietorship is regulated in state regulations, it is still not a legal entity. The sole owner of the proprietorship that operates all the business activities in Laos

²¹ Arief and Ramadani, page 116.

²² Januarita, "The Newly Sole Proprietorship as Limited Liability Company in Recent Indonesian Company Law.", page 6.

is required to pay personal income tax because the sole proprietorship is not a separate legal entity from the sole owner, therefore the company and the owner are the same subject of taxation.²³

Unlike the example of previous countries, India regulates the sole proprietorship under the name one person company as a legal entity with limited liability under the Companies Act 2013. One person company is a new business concept in India that aims to promote entrepreneurship in India in order to maximize every business' profit by minimizing the administrative costs while establishing the business and when the business is running. The advantages of running a business in the form of one person company is the company has a legal stand or as a legal entity that regulated in state regulation, has a limited liability, and a transferable ownership. One person company only applies to small business that have a share capital with no more than Rs. 50 lakhs and less than Rs. 2 crores. If this condition is not obeyed, then the business has to change the business form from one person company to limited liability company.²⁴ The establishment of one person company in India as an alternative form of business that the Government has facilitated, requires the sole owner or founder to nominate a nominee who will take over and continue the one person company's responsibilities if the sole owner dies or is incapacitated. If this situation happens, then the person who is nominated will be the person who recognized by the company to continue the sole owner to operating the business, get a company's share, and other rights and obligations. The main character of one person company in India based on Companies Act 2013 is that there is only one single shareholder who fully holds the ownership of the company's share. Specifically, Companies Act 2013 states that only Indian Citizenship with a domicile in India can form one person company business, with a note that only 1 person can form 1 one person company. Same as the sole proprietorship in Indonesia, one person company in India also recognizes Director. It is possible that there may be more than 1 and up to 15 Directors in one person company. But even though there are 15 Directors, the sole owner may not give them a share of the company's shares. One person company consists of the sole owner and Director(s) will help to make quick decisions and determine how they are going to be implemented in their business activities.

²³ Heriawan, "Studi Perbandingan Perusahaan Perseorangan (Sole Proprietorship) Dan Koperasi (Cooperative) Pada Negara Laos & Indonesia.", page 29-30.

²⁴ Bhavna P Patel, "One Person Company : Recent Trends in Business," *International Journal of Research and Analytical Reviews* 3, no. 1, March (2016), page 124.

To highlight the characteristics differences of the sole proprietorship in India namely one person company with sole proprietorship in Indonesia after the issuance of Law 11/2020 of Job Creation, take a closer look to Table 2.²⁵

The first one person company in India that was registered since the Companies Act 2013 effectively applied on April 1st, 2014 is Vijay Corporate Solutions OPC Private Limited on April 28th, 2014 in Delhi with Mr. Vijay as the sole owner, the sole Director and the only shareholder. The easy establishment process and the advantages of running a business through one person company compared to other business form has made one person company experienced a rapid development in India. One person company is expected to make entrepreneurs easier to access funding sources provided by Bank and other financial institutions. This one person company concept received good feedbacks by in the Indian community. In August 2018 based on the listing report by the Government, there were a total of 489 one person companies in India with a collective authorized capital of Rs. 4.63 crores. This number continues to increase rapidly until in December 2014, there were 1.403 registered one person company with a collective authorized capital of Rs. 31.31 crores.²⁶ Even though one person company is a new business concept in India, in less than 1 year the reactions from the public is positive. Many small businesses and sole proprietorship accept this concept because of the advantages and convenience that one person company has. One person company provides many opportunities for someone who wants to start a small business with limited liability. The main advantage that one person company has is that people can start a business without the fear of unlimited liability to their personal assets. In other words, one person company combines those advantages of the sole proprietorship with limited liability company. Based on the explanation above, the existence and legal standing of one person company in India according to the Companies Act 2013 has similarities with the sole proprietorship in Indonesia based on Law 11/2020 of Job Creation and Government Regulation 8/2021 of Company's Authorized Capital and Registration, Establishment, Amendment, and Dissolution of Companies that Meets the Criteria of Micro and Small Businesses.

²⁵ Patel, page 127.

²⁶ Patel.

Table 1.
Differences About Definition, Acquisition of Legal Entity Status, Establishment, Authorized Capital, and Company's Cost of Limited Liability in Law 40/2007 and Law 11/2020

Substance	Law 40/2007	Law 11/2020
Definition	Limited liability company is a legal entity which is a capital alliance that carries business activities with authorized capital in the form of shares.	Limited liability company is a legal entity which is a capital alliance that carries business activities with authorized capital in the form of shares or an individual legal entity that meets the criteria of micro and small businesses.
Acquisition of Legal Entity Status	Legal entity status is obtained after the ratification through a Decree of the Ministry of Law and Human Rights.	Legal entity status is obtained after receiving a registration proof from the Ministry of Law and Human Rights.
Establishment	The company must be founded by two or more people, with the exception for companies whose the entire shares are owned by the state, as well as companies that are related to the capital market.	The company must be founded by two or more people, with the exception for companies whose the entire shares are owned by the state, as well as companies that are related to the capital market, regional-owned enterprises, village-owned enterprises, and company the meets the criteria of micro and small business.
Authorized Capital	The company must have a minimum authorized capital of 50 Million IDR.	The company is required to have an authorized capital, but the amount is determined based on the decision of the founder of the company. In other words, there is no minimum limit for the company's authorized capital.
Company's Cost	The company's cost is regulated in a Government Regulation.	The company's cost is regulated in non-tax state revenue regulation.

Source: Law 40/2007 of Limited Liability Company and Law 11/2020 of Job Creation

Table 2.
Differences of The Sole Proprietorship with One Person Company

Business Form	Sole Proprietorship	One Person Company
Number of Person Required	Single Person	Single Director & Shareholder
Ownership	Business & Owner viewed as a single entity	Separate entity & owned by one person
Capital Required	No financial assets needed for registration	Minimum capital Rs. 1 Lakhs
Compliance	No compulsory compliance	No board meeting or annual general meeting are needed

Source: Bhavna P Patel, "One Person Company : Recent Trends in Business," *International Journal of Research and Analytical Reviews* 3, no. 1, March (2016)

4. Conclusion

Indonesia accommodates the legality of running a business as the sole proprietorship through the enactment of Law 11/2020 of Job Creation which amending and add several articles in Law 40/2007 of Limited Liability Company. Limited liability company experienced a concept expansion by adding the sole proprietorship as the new legal entity that meets the criteria of micro and small business. The main difference between the sole proprietorship before and after Law 11/2020 of Job Creation is the liability form. The conventional sole proprietorship prior to Law 11/2020 of Job Creation has unlimited liability, which the sole owner's asset become one with the company's asset. The sole proprietorship after Law 11/2020 of Job Creation that meets the criteria micro and small business has limited liability, which there is a separation of the sole owner's asset with the company's asset. Nevertheless, there is some confusion regarding to the sole proprietorship as the new legal entity and the expansion of the concept of a limited liability company. The centralization of duties and functions of the three main organs in limited liability company is focused at the sole owner, which this can lead the absence of check and balance system and the potential for the arbitrary actions. Therefore to avoid confusions, the Government needs to regulates furthermore and to explain specifically about the sole proprietorship.

In general, most countries do not specifically regulate the sole proprietorship's existence and activities. It can be interpreted that the majority of the sole proprietorship as a business form is not a legal entity. This situation occurs in Asian countries, where in Thailand the sole proprietorship is widely used and known by entrepreneurs to run a business. Even though it is highly popular, the sole proprietorship has not been regulated in the Thailand's state regulations which also leads that the sole proprietorship is not a legal entity. On the other hand, Malaysia and Laos have regulated the sole proprietorship in their state regulations, but this does not change the main character of the sole proprietorship that it is still not a legal entity. Meanwhile, India has given a legality to running a business through the sole proprietorship from just like Indonesia. The provision of the sole proprietorship as a new legal entity has an impact on changing the unlimited liability into limited liability. This encourages entrepreneurs to start their business through a flexible and simple form of the sole proprietorship to improve national's economy.

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