

ONE-PERSON LIMITED LIABILITY COMPANY: CONSIDERING COMPANY'S ORGAN GOVERNANCE OF THE INDONESIAN LEGAL ENTITIES FOR MICRO AND SMALL ENTERPRISES

¹Ayu Kholifah, ²Shelly Kurniawan

¹ Faculty of Islamic Economics and Business, UIN Prof. K.H. Saifuddin Zuhri, Purwokerto, Indonesia

² Faculty of Law, Universitas Kristen Maranatha, Bandung, Indonesia
ayu.kholifah@gmail.com

Abstract

The government continues to strive to improve the ease of doing business, one of which is legitimizing the existence of a new entity intended for micro and small enterprises (MSEs). The entity is a One-Person Limited Liability Company, which is familiar for particular countries with higher ease of doing business than Indonesia. However, this new business form for MSEs is unique and has different characteristics from other countries. The new regulation restricts the founder and shareholders, who can only be natural persons and cannot be more than one. The problem is that the law obscurity of the company's organ emerges not following previous regulations because there is no obligation to have supervisory bodies on it. Being the only different entity can be an advantage, but it can also be a rash act. This normative legal research uses the comparative law method to identify problems in statutory regulation. The result shows a legal vacuum in the new regulation of Indonesian one-person companies' organs, whether they should implement the one-tier board or have the option to adopt the two-tier board system. The thing to consider is supervisory bodies should remain within an entity with limited liability regardless of its system.

Keywords: *Legal Entity; One-Person Company; Governance; Board Structure*

1. Introduction

Changes have been made to the regulation on Limited Liability Companies when Law no. 40 of 2007 on Limited Liability Companies (Hereafter LLC Law) is amended by Law no. 11 of 2020 on Job Creation (Hereafter Job Creation Law). Job Creation Law is also dubbed UU Sapu Jagat (equal to one-size-fits-all law) because it uses an omnibus approach, where one new law can amend stipulations in several laws. In this context, Job creation law amends some articles in LLC Law, among other stipulations. Changes and norms added to LLC Law through Job creation law could be found in the ease-of-doing-business cluster. Almost all amendments related to ease of business are directed at small and medium-scale enterprises.

Data from the Ministry of Cooperative and Micro, Small, and Medium-scale Enterprises (MSMEs) show that 99% of businesses in Indonesia belong to the MSMEs category, absorbing approximately 97% of labor in the country.¹ Responding to this condition, the government

¹ "Naskah Akademis Rancangan Undang-Undang Tentang Cipta Kerja," *Badan Pembinaan Hukum Nasional*, last modified 2020, accessed September 29, 2021, https://bphn.go.id/data/documents/na_cipta_kerja.pdf.

designed a regulation expected to provide business ease, notably for MSMEs, promote a better employment rate, and positively affect the country's economy. One of the benefits of doing business the government offers through job creation law is the stipulation on establishing a single-member limited liability company for MSEs. That is, the amendment has resulted in different dimensions as in Table 1.

This change resulted in a new entity: *Perseroan Perorangan* (Single-Member Limited Liability Company) for MSEs. Interestingly, the new arrangement allows *Perseroan Perorangan* to obtain limited liability. However, most countries regulate that sole proprietorship as a business form is not a legal entity.² Before the Job Creation Law is passed, the establishment of a company should meet four main elements: representing joint capital; being established based on a contract; performing business activities; and, being validated by the government.³ However, the capital alliance and contract principles, as stated in the first and second elements, did not apply to all types of companies, the law makes exceptions for several company types.

Article 7 paragraph (7) of LLC Law stipulates that the provision obliging a company to be established by two or more people does not apply to the company whose all shares are owned by the state, companies managing stock exchange, earning and guarantee houses, central security depositories, and other institutions regulated in Law on Capital Market. Currently, the exception also applies to *Perseroan Perorangan*. That is, the establishment of a Limited Liability Company for MSEs only needs to fulfill the third and fourth elements as *Perseroan Perorangan* can be established by one person, as regulated in article 153A paragraph (1) of the Fifth Section: Limited Liability Company of Job Creation Law.

Individual legal entities have long existed in some countries, especially those with a higher Ease-of Doing Business (EoDB) rank. EoDB is an index developed by the World Bank to describe the ease of business in a country.⁴ However, Minister of Law and Human Rights, Yasonna H. Laoly states that the concept of *Perseroan Perorangan* for MSEs can only be found in Indonesia. Further, it is stated that the organ of *Perseroan Perorangan* will operate while supervising its own

² Aliza Madina Putri and Paramita Prananingtyas, "Existence And Characteristics Of Sole Proprietorship In Indonesia," *Diponegoro Law Review* 7, no. 2 (2022): 259, <https://doi.org/10.14710/dilrev.7.2.2022.245-261>.

³ Yahya Harahap, *Hukum Perseroan Terbatas*, 6th ed. (Jakarta: Sinar Grafika, 2016), 33–36.

⁴ Teguh Tresna Puja Asmara, Isis Ikhwanasyah, and Anita Afriana, "Ease of Doing Business: Gagasan Pembaruan Hukum Penyelesaian Sengketa Investasi Di Indonesia," *University Of Bengkulu Law Journal* 4, no. 2 (2019): 118, <https://doi.org/10.33369/ubelaj.4.2.125-143>.

activities⁵, a new concept that has yet to be regulated in Indonesia's LLC law. The company organ held in Article 1 number 2 of LLC law consists of a General Meeting of Shareholders, the Boards of Directors, and Commissioners. Should these organs exist in the structure of a *Perseroan Perorangan*? There are no regulations requiring their presence in a *Perseroan Perorangan*.

Wiwin Budi Pratiwi captured the purpose of setting up a *Perseroan Perorangan* and has carried out a simple business entity that is easy to manage because no formalities are needed. The company's profits become the full benefit of the owner.⁶ Ease of doing business must still contain legal certainty about the organ of a one-person company so as not to confuse business actors, especially MSEs. Anggraeny and Rizki discussed the impact of legal uncertainty of a limited liability company with the existence of a one-person company in Indonesia. There are contradictions and weaknesses in the concept of a *Perseroan Perorangan*, and the absence of an authorized capital limit can also affect the company's sustainability.⁷

This is an exciting point to be discussed further, considering Article 9 of Governmental Regulation No. 8 of 2021 on Company Basic Capital and Establishment Registration, Changes, and Dissolution of Company that Meets Criteria of Micro and Small Enterprises, company organ has function as operating and supervising elements at the same time. There is no certainty whether the organ can be in two organs with the position of the Commissioner. The confusion becomes even more when Article 9 of Governmental Regulation No. 8 of 2021 states that *Perseroan Perorangan* should change its legal status into a corporation if, among other causes, the number of shareholders becomes more than one person.

Failures to regulate this issue may result in a legal gap or legal vacuum in the organ structure of a *Perseroan Perorangan*, where the efforts of a one-person company to make it easier to do business brings new problems. This legal vacuum must be addressed because corporate governance significantly affects firm performance, especially the board size variable as a company organ.⁸ Therefore, this research tries to describe the organs of the company that exist in companies

⁵ Hukum dan Kerjasama Biro Humas, "Mengenal Konsep Perseroan Perorangan Di Indonesia," *Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia*, last modified 2021, accessed October 2, 2021, <https://www.kemenkumham.go.id/berita-utama/mengenal-konsep-perseroan-perorangan-di-indonesia>.

⁶ Wiwin Budi Pratiwi, "Individual Companies as New Legal Entities in Law Number 11 of 2020 on Job Creation," *Nurani Hukum : Jurnal Ilmu Hukum* 4, no. 1 (2021): 9–19, <https://doi.org/10.51825/nhk.v4i1.11266>.

⁷ Angreany 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 (2021): 106–120, <https://doi.org/10.35673/ajmpi.v6i2.1550>.

⁸ Rekha Pillai and Husam-Aldin Nizar Al-Malkawi, "On the Relationship between Corporate Governance and Firm Performance: Evidence from GCC Countries," *Research in International Business and Finance* 44 (2018): 394–410, <https://doi.org/10.1016/j.ribaf.2017.07.110>.

in various countries, both in European and Asian countries, as well as provide a description of the pluses and minuses of the organ systems that will later be applied to individual companies in terms of supporting the ease of doing business in Indonesia.

2. Method

This normative legal research uses two approaches as data analysis methods those are the comparative law approach and the statutory approach. As it's normative legal research, it reviews the principles and norms of positive law.⁹ A comparative law approach would later compare the organs of one-person companies involving some companies' acts of other countries. This way, similarities and differences in the regulations applied can be found.¹⁰ The statutory approach was applied by reviewing national laws and regulations on LLC: Law No. 11 of 2020 on Job Creation, Law No. 40 of 2007 on Limited Liability Companies, and Governmental Regulation No. 8 of 2021. A conceptual approach was also applied to review the concept of *Perseroan Perorangan* based on views and doctrines in jurisprudence.¹¹

3. Results and Discussion

3.1. Distinctive Characteristics of *Perseroan Perorangan* for MSEs in Indonesia

Perseroan Perorangan for MSEs is one of the company types in Indonesia, and LLC Law regulates it that Job Creation Law amends. The implementing regulation of these laws is the Governmental Regulation No. 8 of 2021. *Perseroan Perorangan*, as the new legal entity in Indonesia, has some characteristics that are different from other legal entities. It cannot be equated with business organizations in the form of sole proprietorships and existing one-person companies. A sole proprietor has unlimited liability in business activities¹², whereas a limited liability is applied for *Perseroan Perorangan*. Furthermore, for a one-person company, the minimum capital is required¹³, while *Perseroan Perorangan* does not.

⁹ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, Revised. (Malang: Bayumedia Publishing, 2007), 295.

¹⁰ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9, <https://doi.org/10.22219/aclj.v4i1.24855>.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, Revised. (Jakarta: Kencana, 2013), 133–135.

¹² Budi Santoso, "Existence Of Sole Proprietorship In Business Activities In Indonesia," *International Journal of Scientific & Technology Research* 9, no. 01 (2020): 1646, <https://www.ijstr.org/final-print/jan2020/Existence-Of-Sole-Proprietorship-In-Business-Activities-In-Indonesia.pdf>.

¹³ Bhavna P. Patel, "One Person Company: Recent Trends in Business," *International Journal of Research and Analytical Reviews* 3, no. 1 (2016): 127, http://ijrar.com/upload_issue/ijrar_issue_2035.pdf.

The concessions given to one-person companies produce a business entity that is easy to set up and has the advantage of limited liability. Kraakman, Reinier H., and John Armour¹⁴ as well as Nindyo Pramono¹⁵ Describe the five characteristics of a legal entity in the form of LLC: Legal personality; Limited Liability; Transferable Shares; Management Delegation; and Investors' Ownership.

Legal personality deals with a legal entity's autonomy in terms of wealth and ability to perform legal actions. The legal entity's autonomy results in the company's limited responsibility, which aims to protect the shareholders' wealth. LLC shares should be transferable to maintain the company's capital stability. A legal entity needs individuals as representatives to manage the company because the legal entity is an artificial person. Lastly, since the legal entity capitalizes in the form of shares, the legal entity should have investors.¹⁶

Perseroan Perorangan possesses a legal personality because each type of company registered in the Ministry of Law and Human Rights receives the status of a legal entity. The shareholders' liability is limited to their investment, as regulated in Article 153J of Job Creation Law. Furthermore, the share transfer in *Perseroan Perorangan* may significantly affect the business, even leading to company acquisition. That condition occurs because there is only one shareholder in the *Perseroan Perorangan*. The management delegation of *Perseroan Perorangan* depends on its shareholder-founder, whether to appoint others or directly handle the company business. Delegation means that an individual is set to operate the company as an artificial person. Regarding investors, *Perseroan Perorangan's* investor is the founder him/herself. If capital is invested in the company's wealth, he/she will become the investor.

It is essential to see the characteristics of companies in other countries, considering that nowadays, most lawmakers will adopt new regulations after having comprehensive comparative research.¹⁷ Legislation in some other countries related to Single-member LLCs, such as Singapore's Companies Act, European Company law on Single Member Private Limited Liability Companies, and Malaysian Companies Act 2016, found that Indonesia's single-member LLC has

¹⁴ Reinier H. Kraakman and John Armour, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (Oxford University Press, 2017), 5, <https://doi.org/10.1093/acprof:oso/9780198739630.001.0001>.

¹⁵ Nindyo Pramono and Sularto Sularto, *Hukum Kepailitan Dan Keadilan Pancasila – Kajian Filsafat Hukum Atas Kepailitan Badan Hukum Perseroan Terbatas Di Indonesia* (Yogyakarta: Andi, 2019), 152–161.

¹⁶ Pramono and Sularto, *Hukum Kepailitan Dan Keadilan Pancasila – Kajian Filsafat Hukum Atas Kepailitan Badan Hukum Perseroan Terbatas Di Indonesia*.

¹⁷ Mathias Reimann and Reinhard Zimmermann, eds., *The Oxford Handbook Of Comparative Law* (Oxford University Press, 2019), 104, <https://doi.org/10.1093/oxfordhb/9780199296064.001.0001>.

a specific restriction that differs from other single-member LLC in other countries. The differences are presented in Table 2.

As displayed in Table 2, Indonesia's *Perseroan Perorangan* has stricter characteristics in terms of capital ownership and number of shareholders than other Single-member companies in other countries. Singapore's Private Limited Liability (Pte Ltd) and Malaysian Sendirian Berhad (Sdn. Bhd) are similar to private companies in Indonesia. The difference rests on the establishment aspect, where only one individual can establish it. In other words, company establishments in Malaysia and Singapore do not follow the principle of contract. *Perseroan Perorangan* concept is closely similar to European Single Member private limited liability companies (*Societas Unius Personae*/SUP). However, the difference is that while the investors in SUP could be natural or legal persons, Indonesia's *Perseroan Perorangan* could only be natural persons. To sum up, *Perseroan Perorangan* is Indonesia's distinctive company type, which is no similar to other countries.

3.2. Comparing Company Organ Structure in Some Countries

As a legal subject, LLC is an artificial person who cannot act of its own will. Accordingly, company organs are established. The organic theory views the presence of a legal entity as similar to a person who can act through its organs.¹⁸ People who sit in these organs are known as the Company Board. The board refers to individuals in leadership positions of a company who are responsible for controlling, directing, and supervising the company's operation.¹⁹ There are two types of organic company structures: one-tier management structure (one-tier board) and two-tier management structure (two-tier board). In countries applying a one-tier board, the management and supervisory functions are performed in a single organ. According to Munir Fuadi, one-tier management can also be called a "monolithic system" where management and supervisors are together in a single entity.²⁰ In contrast, a two-tier structure requires different organs to carry out the management and supervisory functions.²¹

¹⁸ Hasbullah F. Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2017), 77.

¹⁹ Akhmad Syakhroza, "Best Practices Corporate Governance Dalam Konteks Kondisi Lokal Perbankan Indonesia," *Manajemen Usahawan* 32, no. 06 (2003): 13–20, <https://lontar.ui.ac.id/detail?id=114433#>.

²⁰ Munir Fuady, *Perseroan Terbatas Paradigma Baru* (Bandung: Citra Aditya Bakti, 2017), 111.

²¹ Gregory F. Maassen and Frans A. J. Van Den Bosch, "On the Supposed Independence of Two-Tier Boards: Formal Structure and Reality in the Netherlands," *Corporate Governance* 7, no. 1 (1999), <https://doi.org/10.1111/1467-8683.00126>.

Management and supervisory functions in a one-tier structure are performed by one organ, namely the Board of Directors, consisting of *executive* and *non-executive directors*. Meanwhile, in two-tier structures, the Board of Directors does not perform the supervisory function as another organ does. Countries adhering to a two-tier board model have various terms for supervisory boards, such as a board of commissioner, committee, and chairman. The vocabulary of the company organ depends on the regulations in each country.²²

The concept of a two-tier management structure in LLC stems from German company law, known as the “*aktiengesell-schaft*” concept. This concept was then brought to France, adopted by the Netherlands, and then brought to its colonies, including Indonesia. Before LLC law, the stipulation on the presence of a commissioner in a company was regulated in Indonesia's Commerce Code.²³ Most common law countries adhere to a one-tier management structure, where the Board of Directors controls the management, and the General Meeting of Shareholders (GMS) performs the supervisory functions.²⁴ However, not all civil law countries apply a two-tier management structure. For instance, as a civil law country, Japan adopts a one-tier management structure without a board of commissioners. Meanwhile, as stipulated in LLC law, Indonesia adheres to a two-tier board structure, where the board of directors holds management functions while the board of commissioners holds supervisory functions. Asian countries adhering to a two-tier management structure with a board of commissioners can be found in Bangladesh and Mongolia.

Some countries have different regulations regarding the mandatory nature of the implementation of company organ structure. While some countries oblige to adhere to a specific organ structure, others give companies freedom of organ structure. European countries have different regulations on this issue. At the same time, Belgium, Italy, Portugal, Spain, Sweden, and England adopted the one-tier structure, and Austria, Denmark, Germany, and the Netherlands applied the two-tier structure. Meanwhile, Finland, France, Norway, and Switzerland are free to use a one- or two-tier structure.²⁵ An overview of board structure regulations in several countries that has been mentioned before can be seen in Table 3.

²² Gregory Francesco Maassen, *An International Comparison of Corporate Governance Models: A Study on The Formal Independence and Convergence on One-Tier and Two-Tier Corporate Boards of Director in The United States of America, the United Kingdom and the Netherlands* (Amsterdam: SpencerStuart, 2020).

²³ Fuady, *Perseroan Terbatas Paradigma Baru*, 106–109.

²⁴ Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi*, 79–80.

²⁵ Lugart Van den Berghe, *Corporate Governance in A Globalising World: Convergence or Divergence?* (New York: Kluwer Academic Publisher, 2002), 71.

Indonesia can implement either one or two LLC organ systems with the presence of *Perseroan Perorangan*. However, again, this has yet to be regulated definitively. We need to know *that* each type of management structure has weaknesses and strengths. Table 4 displays the consequences of the implementation of one- and two-tier management structures.

Tahseen Mohsan Khan et al. report that countries with a one-tier structure exhibited better information disclosure quality than those with a two-tier structure. Interestingly, female board members and free cash flow affect the information disclosure quality improvement in a one-tier structure. In contrast, the board's power and controlling shareholders affect the information disclosure quality in a two-tier structure.²⁶ On the contrary, Mao-Feng Kao, Lynn Hodgkinson, and Aziz Jaafar have different data; their research results show that in developing countries in Asia, evidenced from Taiwan, the firms with a two-tier board structure perform better than those with a one-tier board system.²⁷

Determining the organ of *Perseroan Perorangan* is closely related to its characteristics. The most prominent character of Indonesia's *Perseroan Perorangan* for MSEs is the number and criteria of the founder and its limited shareholders. Some types of companies in Indonesia are excluded from the obligation to have two founders. In other words, the LLC law has recognized the concept of a single-shareholder corporation before being regulated in the Job Creation Law. In other words, the capital alliance and contract principles do not apply to single-shareholder companies.²⁸ Therefore, discussion on the organ structure of *Perseroan Perorangan* is scrutinized, from GMS to the Board of Commissioner to understand the provision of each organ in *Perseroan Perorangan*.

First, regulation on General Meeting of Shareholders (GMS) in *Perseroan Perorangan*. Article 1 number 4 states that GMS is a company organ that has authority not given to the Board of Directors or Board of Commissioners within limits specified in LLC Law. GMS in a single-shareholder company (other than *Perseroan Perorangan*) is held by the state element or government, i.e., officials representing the state/regional/village, and legal entity. However, in *Perseroan Perorangan*, the single shareholder's decision power is equal to the GMS decision,

²⁶ Tahseen Mohsan Khan, Safia Nosheen, and Naveed ul Haq, "Corporate Governance Mechanism and Comparative Analysis of One-Tier and Two-Tier Board Structures: Evidence from ASEAN Countries," *International Journal of Disclosure and Governance* 17 (2020): 61–72, <https://doi.org/10.1057/s41310-020-00075-0>.

²⁷ Mao-Feng Kao, Lynn Hodgkinson, and Aziz Jaafar, "Ownership Structure, Board of Directors and Firm Performance: Evidence from Taiwan," *Corporate Governance: The International Journal of Business in Society* 19, no. 1 (2019): 189–216, <https://doi.org/10.1108/CG-04-2018-0144>.

²⁸ A'an Efendi, "Prospek Perseroan Pemegang Saham Tunggal Tanpa Perkecualian Untuk Kemudahan Bisnis," *Veritas et Justitia* 6, no. 2 (2020): 345, <https://doi.org/10.25123/vej.v6i2.3694>.

as regulated in Article 8 paragraph (5) in conjunction with Article 13 paragraph (1) and Article 2 of governmental regulation no. 8 of 2021.

The Characteristic of *Perseroan Perorangan* provides privilege for the founder-shareholder, where making decisions as strong as GMS is unnecessary.²⁹ Febri Jaya argues that the concept of GMS no longer suits Indonesia's concept of *Perseroan Perorangan*.³⁰ Jaya's argument is quite acceptable, considering that the shareholders of *Perseroan Perorangan* should be no more than one person. GMS needs to be replaced by another term, for instance, shareholder decision. *Perseroan Perorangan* requires more detailed regulation regarding the company organ due to its different characteristics.

Second, Regulation on the Board of Directors in *Perseroan Perorangan*. Article 153D of Job Creation Law asserts that the Director Board of MSEs should carry out the company management in line with the company's goals and interests. The legal argument of the provision shows that the wealth of *Perseroan Perorangan* should be managed by the director with goodwill and responsibility to anticipate the conflict of interest, considering that the single shareholder can also serve as a member of the board of directors. The single shareholder who can hold a director position is relatively safe. There is a potential risk that the director uses the company's wealth for personal purposes as a single shareholder. Using this concept, conflict of interest relates not only to the company's wealth but also the use of the company's information for personal interest.³¹ Although conflict of interest potentially occurs in any company type, the presence of other organs with separate functions is likely to control one another.

Third, regulation on the Board of Commissioner in *Perseroan Perorangan*. Based on the review of legislation specifically regulating *Perseroan Perorangan*, no provision obliges the presence of the Board of Commissioner. This is different from an LLC, in which the establishment deed should contain the data of the board of commissioners. LLC law views it as necessary to have a board of commissioners as the advisory and supervisory board for the directors and the company's operation. The absence of a provision on the board of commissioner in *Perseroan Perorangan* leads to uncertainty about whether this type of company should apply a one-tier board

²⁹ Shinta Pangesti, "Penguatan Regulasi Perseroan Terbatas Perorangan Usaha Mikro Dan Kecil Dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (2021): 124, <http://dx.doi.org/10.33331/rechtsvinding.v10i1.650>.

³⁰ Febri Jaya, "Potensi Konflik Kepentingan Dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas Dalam Omnibus Law," *Kosmik Hukum* 21, no. 2 (2021): 112, <https://doi.org/10.30595/kosmikhukum.v21i2.10310>.

³¹ Jaya, "Potensi Konflik Kepentingan Dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas Dalam Omnibus Law."

structure or is given the freedom to choose between one or two-tier board structure, as found in some European countries. Regulation on *Perseroan Perorangan* for MSEs in Indonesia should clarify its organ system structure.

Nindyo Pramono states that the board of commissioners in a one-tier board structure could come from an outside director. The commissioner can become a Chief Executive Officer (CEO) to avoid structural dualism.³² In *Perseroan Perorangan*, the organ consists only a person who acts as the founder, as well as a shareholder, and can also become a director with a net worth of no more than Rp.50.000.000, - (fifty million rupiahs) according to the MSEs criteria.³³ This small nominal is the consideration to eliminate the supervisory board, i.e., The presence of an organ other than the board of organizations can impose more burden on the company's expenditure.

A one-tier board structure does not necessarily eliminate the supervisory function of the company organ but puts the management and supervisory tasks in one organ. Supervision and monitoring can be more effective than the classic function of administration.³⁴ This explains why there are executive and non-executive directors in a one-tier structure. The executive director is involved in the company management, while the non-executive management comes from an outside director who objectively evaluates the company management.³⁵ *Perseroan Perorangan* adheres to a one-tier structure; however, the supervisory functions should not be eliminated from the company organ.

3.3. Legal Gap on Regulation of *Perseroan Perorangan* in Indonesia

Perseroan Perorangan is the new entity that aims to support EoDB for MSEs, a brand-new economic institution in Indonesia adopted from foreign economic systems. It could be more flawless, considering a range of adjustments is needed to suit the prevailing system. Ridwan Kairandy argues that such a condition often leads to a legal gap, a condition often used by certain parties to carry out unhealthy business activities.³⁶

The founder-shareholder's authority dominates the company, starting from his/her ability to sit in the director position to his/her power of decision that equals to GMS. This condition

³² Nindyo Pramono, *Hukum PT Go Public Dan Pasar Modal* (Yogyakarta: Andi, 2013), 114.

³³ *Law No. 20 of 2008 on Micro, Small, and Medium Enterprises*, 2008, pt. Article 6 paragraph (1) and (2).

³⁴ C. José García Martín and Begoña Herrero, "Boards of Directors: Composition and Effects on the Performance of the Firm," *Economic Research-Ekonomska Istraživanja* 31, no. 1 (2018): 1015–104, <https://doi.org/10.1080/1331677X.2018.1436454>.

³⁵ Charlotte De Moor, "Board Effectiveness: One-Tier versus Two-Tier Boards" (University of Ghent, 2014), 11.

³⁶ Ridwan Khairandy, "Pembaharuan Hukum Ekonomi Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 1, no. 1 (1994): 13, <https://doi.org/10.20885/iustum.vol1.iss1.art2>.

potentially results in a phenomenon of ultra vires. Ultra vires applies to activities prohibited by a company's article of association and activities that exceed the given authority.³⁷ The action of the director of *Perseroan Perorangan* draws more attention due to the absence of a board of commissioners that performs the supervisory functions.

The supervisory function is essential to oversee the management policy and the operation of the company business and to provide advice to the board of directors according to Article 108 paragraph (1) of LLC Law. If *Perseroan Perorangan* adheres to one-tier board structure, *daden van beheren/daden van beheer* and *daden van beshicken/daden van eigendom* are performed by one individual. *Daden van beheer* refers to the authority to perform managerial actions.³⁸

The founder of *Perseroan Perorangan* should manage the company for the company's interest and goal, as regulated in Article 92 paragraph (1) of LLC Law. *Daden van beken* refers to the limitation of management's authority related to actions that may lead to the transfer of wealth³⁹ or to bear wealth or perform an ownership job.⁴⁰ When the director intends to perform an action (e.g., taking a bank loan, or other actions regulated in the article of association), he/she needs to obtain approvals from different organs (GMS and/or commissioner).

The absence of a commissioner and GMS eliminates *daden van beshiken*, and the company is responsible for any loss (the concept of limited liability). Implementing limited liability when only one person holds the management is difficult, as the delineation between personal and limited liability is obscure, as in the doctrine of *piercing the corporate veil*. *Piercing the corporate veil* defines a process of bearing another person with responsibility because the organ carries out the company.⁴¹

When the management is not performed with goodwill, individuals should be imposed by personal liability and cannot hide behind limited liability. In addition, the managers cannot hide behind the business judgment rule doctrine, as regulated in Article 97 paragraph (5) of LLC Law, where directors cannot be held liable for company losses. Job Creation Law has yet to handle the

³⁷ Munir Fuady, *Doktrin-Doktrin Modern Dalam Corporate Law Dan Eksistensinya Dalam Hukum Indonesia* (Bandung: Citra Aditya Bakti, 2014), 101.

³⁸ Y. Sogar Simamora, "Karakteristik, Pengelolaan Dan Pemeriksaan Badan Hukum Yayasan Di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 182, <http://dx.doi.org/10.33331/rechtsvinding.v1i2.95>.

³⁹ Simamora, "Karakteristik, Pengelolaan Dan Pemeriksaan Badan Hukum Yayasan Di Indonesia."

⁴⁰ Ahmad Mawardi Nur, "Pertanggungjawaban Direksi Bumn (Persero) Yang Melakukan Perjanjian Kerjasama Tanpa Persetujuan RUPS Yang Mengakibatkan Kerugian Keuangan Negara," *Jurnal Syntax Admiration* 1, no. 8 (2020): 1052, <https://doi.org/10.46799/jsa.v1i8.153>.

⁴¹ Ardison Asri, "Doktrin Piercing The Corporate Veil Dalam Pertanggung Jawaban Direksi Perseroan Terbatas," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 1 (2017): 82, <https://doi.org/10.35968/jh.v8i1.138>.

supervisory functions in *Perseroan Perorangan*. Even though Sriasih Wesna, in her research, revealed that *Perseroan Perorangan* adheres to a one-tier system, it is still possible to switch its system by appointing a commissioner as a supervisor function if needed.⁴²

However, that opinion has no legal basis because it has not yet been regulated in statutory regulations, so it can only be called an assumption. Thus, it is necessary to handle this issue further to clarify the management task division and liability when the company or third parties suffer losses. This legal gap should be taken into consideration; *Perseroan Perorangan*, which initially aims to provide ease for MSEs, can cause new problems when the gap is exploited irresponsibly.

Table 1.
Changes in the Definition of Limited Liability Company

LLC Law	Job Creation Law
Limited Liability Company, from now on called a Company, means a legal entity that constitutes a capital alliance established based on an agreement to conduct business activities with the Company's Authorized Capital divided into shares and satisfies the requirements stipulated in this law and its implementing regulations. ⁴³	Limited Liability Company, from now on called a Company, means a legal entity constitutes a capital alliance, established based on an agreement to conduct business activities with the Company's Authorized Capital divided into shares, or personal legal entity that meets the criteria of Micro and Small Enterprise, as regulated in Law on Micro and Small Enterprises. ⁴⁴

Table 2.
Single-Member LLC Comparison

Country	Business Structure	Types and Number of Share Members	Liability of The Members
Singapore	Privat Limited Liability Compay (Pte Ltd.) / Private Limited	Individual or corporate entity, 1 – 50 members ⁴⁵	Limited Liability
Europe	Single-member private limited liability companies (<i>Societas Unius Personae</i> /SUP)	Natural or legal person, single share ⁴⁶	Limited Liability
Malaysia	<i>Sendirian Berhad</i> (<i>Sdn. Bhd.</i>)	1 – 50 shareholders ⁴⁷	Limited Liability ⁴⁸
Indonesia	<i>Perseroan Perorangan</i>	Natural person, single Share ⁴⁹	Limited Liability ⁵⁰

⁴² Putu Ayu Sriasih Wesna, "Indonesia's National Economic Recovery Through the Convenience of Companies Establishing of Micro and Small Enterprises in the Job Creation Act," *Journal Research of Social Science, Economics, and Management* 1, no. 8 (2022): 1092, <https://doi.org/10.59141/jrssem.v1i8.128>.

⁴³ *Law No. 40 of 2007 on Limited Liability Company*, 2007, pt. Article 1 number 1.

⁴⁴ *Law No. 11 of 2020 on Job Creation*, 2020, pt. The Fifth Section on Limited Liability Company, Article 109.

⁴⁵ *Singapore Companies Act*, n.d., pt. Article 17, 18, 20A, 22.

⁴⁶ *Directive 2009/102/EC of The European Parliament And Of The Council of 16 September 2009 in the Area of Company Law on Single-Member Private Limited Liability Companies*, 2009.

⁴⁷ *Malaysian Companies Act*, 2016, pt. Division 1 Article 9.

⁴⁸ *Ibid.*, pt. Division 2 Subdivision 1 Article 192.

⁴⁹ *Law No. 11 of 2020 on Job Creation*, pt. Article 153E paragraph (1) of the Fifth Section: Limited Liability Company.

⁵⁰ *Ibid.*, pt. Article 153J.

Table 3.
Board Structure of LLC in Some Countries

No	Name of Countries	One-tier Board Structure	Two-tier Board Structure
1	Belgium	✓	
2	Italy	✓	
3	Portugal	✓	
4	Spain	✓	
5	Sweden	✓	
6	England	✓	
7	Japan	✓	
8	Germany		✓
9	Austria		✓
10	Denmark		✓
11	Netherland		✓
12	Bangladesh		✓
13	Mongolia		✓
14	Finland	✓	✓
15	France	✓	✓
16	Norway	✓	✓
17	Swiss	✓	✓

Table 4.
Advantages and Disadvantages of Each Board Structure

<i>Board Structure</i>	<i>Advantages</i>	<i>Disadvantages</i>
<i>One-Tier Structure</i>	<i>a. Having a good flow of information</i> <i>b. Faster decision making.</i> <i>c. Better understanding and involvement in the business.⁵¹</i>	<i>a. Difficulties are making and monitoring the same decision simultaneously.</i> <i>b. Less independence of the Boards.⁵²</i>

4. Conclusion

Perseroang Perorangan, as a one-person LLC, can be an appropriate solution for MSEs to transform more effortlessly into a legal entity. It can also become an alternative to improve Indonesia's business climate. The Indonesian concept of one-person LLC is unique and different from Malaysia, Singapore, and Europe. The distinction can be found in its shareholder character, where only one natural person can be the company shareholder. Indonesia's one-person LLC needs to be adjusted to the existing legal system as a new identity.

Indonesian companies only adhere to a two-tier board structure before a brand-new Indonesia one-person LLC is regulated in Job Creation Law. The regulation of one-person LLC eliminates the role of the board of commissioners. However, uncertainty is found about whether

⁵¹ David Block and Anne-Marie Gerstner, "One-Tier vs. Two-Tier Board Structure: A Comparison Between the United States and Germany," in *Comparative Corporate Governance and Financial Regulation*, 2016, 19, https://scholarship.law.upenn.edu/fisch_2016/1/.

⁵² *Ibid.*, 20–21.

the single-member LLC should adhere to a one-tier board structure or be given options to apply a two-tier structure. Downsizing the organ structure into a one-tier board structure may result in efficiency. However, it can be a smooth decision with precise regulation.

The legal gap in Indonesia's one-person LLC concerns the extensive role of the company founder-shareholder, who can act as the director and have prerogative rights as his/her decision's power equals GMS. Another gap is related to the need for more regulation of supervisory organs in Indonesia's one-person LLC. Supervisory bodies should remain within an entity with limited liability regardless of its system. The absence of this organ function could lead irresponsible individuals to exploit this condition to take advantage of the legal gap.

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