

# Individual Company Bankruptcy Based On The Bankruptcy Law

Mochamad Cholil<sup>1</sup>, Ni Made Yordha Ayu Astiti<sup>1\*</sup>, Maghfirah Aliefia<sup>1</sup>, Zakia Fhadillah<sup>1</sup>,  
Muhammad Amirul Alfani<sup>1</sup>

Faculty of Law, Airlangga University Surabaya, Indonesia

\*corresponding author Email: [mochamad.cholil-2022@fh.unair.ac.id](mailto:mochamad.cholil-2022@fh.unair.ac.id)

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## ABSTRACT

After the promulgation of Law Number 11 of 2020 Concerning Job Creation, it has been made possible to form a new legal entity, namely an Individual Company. These changes are referred to in the provisions of Article 109 of the Job Creation Law, which contains several changes to Law Number 40 of 2007 concerning Limited Liability Companies. The government also contains further regulations regarding the existence of an individual company as a legal entity in Government Regulation Number 8 of 2021 concerning Company Authorized Capital and Registration of the Establishment, Amendment and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises. However, the presence of Government Regulation Number 8 of 2021 does not comprehensively regulate several existing legal issues. Therefore, this research was conducted to analyze the problem. Issues related to whether or not individual companies can apply for bankruptcy at the Commercial Court. If this is possible, the creditor as referred to in the provisions of Article 2 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment can naturally become a party involved in a bankruptcy case filed against an Individual Company. This type of research is legal research using statutory and conceptual approaches. The results of this study indicate that an individual company is not necessarily easy to apply for bankruptcy, It is hoped that the existence of an individual company will be able to drive the movement of the economy. Thus, although it is possible to apply for bankruptcy against an individual company, to resolve problems related to general confiscations, a civil lawsuit should be filed in the District Court.

**Keywords:** Bankrupt, Individual Companies, Creditor

## 1. INTRODUCTION

Business development in Indonesia is increasingly advanced, with this development there must be rules that guarantee the development of the business. Seeing the opportunity for Micro and Small Enterprises or abbreviated as UMK to advance people's income, the Government is making every effort to support and provide regulatory convenience. One of the efforts of the Government of Indonesia is to pass Law Number 11 of 2020 concerning Job Creation (later called the Job Creation Law). On October 5, 2020, the House of Representatives together with the President passed the Draft Job Creation Law using the Omnibus Law Method to become law. Furthermore, This Job Creation Law was signed by the President on 2 November 2020 as Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law). The Job Creation Law itself originates from the Government Initiative Draft Law that was submitted on February 13

2020. With the promulgation of the Job Creation Law it is hoped that the acceleration of national economic development will be achieved with a regulatory system.

The existence of the Job Creation Law itself has several scopes in its regulation. Based on the General Explanation of the Job Creation Law, there are at least 4 (four) scopes to be achieved, namely:

enhancing the investment ecosystem and business activities;

increasing the protection and welfare of workers;

facilitation, empowerment, and protection of Cooperatives and Micro, Small and Medium Enterprises; And increasing government investment and accelerating national strategic projects.

One of the efforts to create jobs and ease of doing business which is one of the objectives of the creation of the Job Creation Law was carried out by the Government through a policy of amending the provisions of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the UUPT) as referred to in the provisions of Article 109 of the Copyright Law. Work. So that after the promulgation of the Job Creation Law a new entity is known, namely an Individual Company as a Limited Liability Company legal entity that meets the criteria for Micro and Small Enterprises.

Article 1 Number 1 of the Company Law states that:

Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or individual legal entities that meet the criteria for Micro and Small Enterprises as stipulated in the laws and regulations concerning Micro and Small Enterprises.

Furthermore Article 2 Paragraph (2) Government Regulation Number 8 of 2021 concerning Company Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises, confirms that individual legal entities that meet the criteria for Micro and Small Enterprises are as follows.

Companies that meet the criteria for micro and small businesses consist of:

Companies founded by 2 (two) people or more; And

Individual company founded by 1 (one) person.

So that individual companies in Indonesia in the Job Creation Law and its implementing regulations are recognized as limited liability companies and have the characteristics of limited liability. What distinguishes it from a limited liability company in a significant way is related to the requirements for establishing an individual company, which is established by 1 (one) person and includes the criteria for micro and small businesses. However, apart from the similarities in the

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characteristics of limited liability in limited liability companies and individual companies, the two types of entities also have significant differences and it is possible to give rise to different legal consequences for legal subjects in an engagement in various aspects, including aspects of bankruptcy law.

Based on the background above, the formulation of the problem to be examined in this study is as follows.

Can an individual company be filed for bankruptcy in a commercial court?

Is the bankruptcy applicant as intended in the provisions of article 2 of Law No. 37 of 2004 concerning bankruptcy and PKPU can apply for bankruptcy?

## **2. RESEARCH METHODS**

The type of research used is legal research. Peter Mahmud Marzuki stated that, "legal research (legal research) is finding the truth of coherence, namely whether there are legal rules and whether there are norms in the form of orders or prohibitions in accordance with legal principles, and whether a person's actions (act) are in accordance with legal norms (not just accordance with the rule of law) or legal principles" (Marzuki, 2021). Approach used is regulatory approach (legislation (statute approach) and conceptual approach (conceptual approach)).

## **3. RESULT AND DISCUSSION**

One of the highlights in the Ease of Doing Cluster is the assessment of starting businesses from the ease of doing business in Indonesia. The criteria for starting a business in Indonesia ranks 140th. This position contributes to the low level of business competitiveness in Indonesia at the level of ranking 73 out of 190 countries surveyed, including the company legal system which currently does not accommodate MSE businesses, including regarding the requirements for establishing a company which are relatively expensive and the requirements the establishment of a company that is difficult for MSE business actors to fulfill in starting a business in Indonesia. Therefore, one of the things regulated by the Job Creation Law is to encourage the birth of a new form of legal entity in the company law system in Indonesia, namely the existence of an Individual Limited Liability Company with minimum wage criteria (hereinafter referred to as an Individual Company). which is stated in Article 109 point 1 of the Job Creation Law which expands the meaning of a limited liability company in Article 1 point 1 of the Limited Liability Company Law by adding a new form of legal entity, namely an individual Legal Entity that meets the criteria for Micro and Small Enterprises as stipulated in the laws and regulations concerning Micro Enterprises and Small, as a Limited Liability Company (hereinafter referred to as PT). In practice, the

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requirement to be established by two or more people as stipulated in the Company Law is burdensome for some business owners in Indonesia, especially in the field of MSEs. namely individual legal entities that meet the criteria for Micro and Small Enterprises as stipulated in the laws and regulations regarding Micro and Small Enterprises, as a Limited Liability Company (hereinafter referred to as PT). In practice, the requirement to be established by two or more people as stipulated in the Company Law is burdensome for some business owners in Indonesia, especially in the field of MSEs. namely individual legal entities that meet the criteria for Micro and Small Enterprises as stipulated in the laws and regulations regarding Micro and Small Enterprises, as a Limited Liability Company (hereinafter referred to as PT). In practice, the requirement to be established by two or more people as stipulated in the Company Law is burdensome for some business owners in Indonesia, especially in the field of MSEs. (Sitorus, 2021)

The birth of the Individual Liability Company business form is inseparable from the results of observations made by the Ministry of Cooperatives and SMEs, that micro and small businesses are experiencing very significant business growth in Indonesia. Based on data from the Ministry of Cooperatives and SMEs, the number of MSMEs in Indonesia has increased from 59.26 million units in 2015 to 64.1 million in 2018 and is expected to grow to 68.60 million in 2020. The contribution to employment for Micro Enterprises, Small and Medium Enterprises (MSMEs) based on data processed by the Ministry of Cooperatives and SMEs as many as 116.97 million people or 97% of the total workforce of 120.598 million people (Rencana Strategis Kementerian Koperasi dan Usaha Kecil dan Menengah Tahun 2020-2024). The government realizes the potential of these MSEs by encouraging the convenience of these micro businesses to have competitiveness and be managed productively. Therefore, this condition triggers the birth of a new form of business in the form of a PT which can be established by individuals and is intended for micro and small businesses (referred to as Individual Liability Company) which is regulated in Article 109 of the Job Creation Law, as a breakthrough against the description of the micro and small scale business landscape. in Indonesia to encourage more professional management and gain trust in financing by the banking world.

The presence of the individual company legal entity is expected to become an economic force in Indonesia and be able to encourage good management by MSE actors. Modification of an individual company that facilitates both the requirements for establishing a company, both the capital and the requirements for the founder, as well as the accountability of the company. In addition, the existence of the individual company is expected to protect the finances of these MSEs from bankruptcy (bankruptcy) to the company's assets and the hope is that it does not include private household assets. Thus, the relaxation of ease of establishment of the company must be

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supported by the existence of the company's obligation to manage the company properly and professionally, so as to prevent mismanagement of the company which can end in bankruptcy and dissolution. Given the strategic nature of this new legal entity, it is important to study, in particular how the legal concept of the individual company is, what are the responsibilities of the company and its management, and what happens in the event of bankruptcy. This needs to be studied to obtain an overview of the company's existence and the company's implications in the event of bankruptcy in managing the company's business.

As a legal subject, individual companies can also take legal actions, including entering into legal relations with other parties which may result in an obligation in the form of debt. If in the event that the company is unable to fulfill its obligations to creditors, then the creditor can demand that the company fulfill its achievements to its creditors, the creditor can demand that the company fulfill its obligations through legal procedures that apply both in court and by means of non-litigation outside the court (Ras, 2018). One way to go through a court in the event that there are several creditors is through a bankruptcy petition or through a procedure for delaying debt payment obligations in advance, which if there is no reconciliation between the creditors and the debtor then it can end in bankruptcy. Bankruptcy itself is everything related to the bankruptcy event, namely a situation when the debtor stops paying (his debts) but not in the sense that the debtor stops paying his debts at all, but the debtor at the time the bankruptcy application is filed is in a state of non-payment. the debt. (C.S.T. kansil, 2002)

Often, the condition of the company's management that is uncertain can make it difficult for the company to pay all debts that are due and collectible. According to Elyta, the condition of companies experiencing liquidity difficulties temporarily has the potential to be misused by directors, stakeholders or creditors who have bad faith to take financial advantage. For example, directors make non-compulsory payments or transactions that are detrimental to the company, which ultimately results in making the company insolvent or temporarily bankrupt (Ras, 2018). The same thing, according to Elyta, was also expressed by Gunawan Widjaja who was of the opinion that the problem of paying off the company's debt was not only-loss due to liquidity or cash flow difficulties, but due to bad faith on the part of the company's board of directors (Ras, 2018). So, as a result of this management error, the creditor takes legal action to apply for debt payment obligations by the creditor which can end in peace or in the event that there is no settlement ending in bankruptcy, or the creditor can directly submit a bankruptcy application to the commercial court.

In the case of an individual company referred to as a debtor, bankruptcy can be filed as long as it meets the bankruptcy requirements as stipulated in Article 2 paragraph (1) of Law



Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (Bankruptcy Law and PKPU), in which case the debtor does not can fulfill their performance obligations to two or more creditors and fail to pay off at least one debt that is past due and payable, is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors. If the bankruptcy application is granted, thus, all individual Company assets are subject to general confiscation referring to Article 21 of the Bankruptcy Law and PKPU, which includes all of the debtor's assets at the time the bankruptcy declaration decision was pronounced as well as everything that was obtained during the bankruptcy. This is also based on Article 1131 of the Civil Code that all movable and immovable property belonging to the debtor, both existing and future, is collateral for the debtor's individual agreements. Article 1132 of the Civil Code states that the goods are a joint guarantee for all creditors, with the proceeds from the sale of goods the goods are divided according to the ratio of their respective receivables unless there are valid reasons for taking precedence among the creditors.

With a declaration of bankruptcy in an individual company, the company's assets become the object of general confiscation in the event of bankruptcy, so that all of the assets of the individual company must be confiscated and all debtor agreements issued after the bankruptcy statement decision can no longer be paid from the bankruptcy estate. , unless the engagement benefits the bankruptcy estate. In addition, Article 24 of the Bankruptcy Law and PKPU states that in the event of bankruptcy, then by law he loses his right to control and manage his assets which are included in bankruptcy assets, from the date the bankruptcy declaration decision was pronounced, namely from 00.00 local time. This also applies to transferred assets, namely for the benefit of bankruptcy assets, the Court may be asked to cancel all legal actions of the debtor who has been declared bankrupt which is detrimental to the interests of the creditor, which was carried out before the decision on the declaration of bankruptcy was pronounced. Cancellation as intended can only be done if it can be proven that at the time the legal action was carried out, the debtor and the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss for the creditor.

This is excepted in the case of the debtor's legal actions that must be carried out based on the agreement and/or because of the law. Cancellation as intended can only be done if it can be proven that at the time the legal action was carried out, the debtor and the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss for the creditor. This is excepted in the case of the debtor's legal actions that must be carried out based on the agreement and/or because of the law. Cancellation as intended can only be done if it can be proven that at the time the legal action was carried out, the debtor and the party with whom





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In Article 104 paragraph (2) and paragraph (3), UUPT, that each member of the Board of Directors must be jointly and severally responsible for any errors or omissions he/she has committed. Likewise, in bankruptcy, if the directors make mistakes or negligence, and the bankrupt assets are not sufficient to pay the existing debts, the directors jointly and severally pay for these deficiencies. However, if the directors take actions beyond their authority in the Articles of Association (*Ultra Vires*), the directors must be responsible for their personal assets (Article 97 paragraph (3) of the Company Law). (perbedaan CV dan PT)

Government Regulation Number 8 of 2021 in article 1 number 1 recognizes companies which are legal entities or individual legal entities that meet the criteria for micro and small businesses. Article 1 point 2 determines that the establishment of an individual company is established by 1 (one) person electronically. This provision is a new requirement for the establishment of individual companies in general, which is regulated in Law Number 40 of 2007 concerning Limited Liability Companies (later referred to as the Limited Liability Company Law). A Limited Liability Company is a more modern business organization, because the division of tasks and authorities between one organ and another is clear, and is stated in the articles of association, for example there are Directors, Commissioners and General Meeting of Shareholders. 2 The authority between these 3 (three) organs complement each other (Gloria, 2021). PP Number 8 of 2021 does not regulate if an individual company is filed for bankruptcy, because of the uniqueness of an individual company which is only founded by one person and does not have a complete company organ like a PT. Individual companies are legal entities (*rechtspersoon*), like humans, legal entities also have rights, obligations and can enter into legal relations. Legal entities also have assets, which are separate from the assets of their management. So there is accountability limitation. (C.S.T. kansil, 1989)

In an individual company, even though it is only founded by 1 (one) person, in terms of liability it is only limited to the company's assets, unless it can be proven that the action is beyond his authority in the articles of association, for example the director commits negligence which causes the individual company to suffer losses, then it can be held liable for personal property.

In the event that an individual company is requested for bankruptcy, then the director must have limited responsibility (the assets of the company), in accordance with the authority in the articles of association, the creditor cannot ask the directors or the founder (owner) to take his personal assets with him. This rule is indeed foreign to Indonesia, its application is also difficult to implement in

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Indonesia, which adheres to the anglosaxon legal system, unlike neighboring countries, for example Malaysia and Singapore, which adhere to the common law system, so the rules in the Job Creation Law can be implemented properly.

But back to the government's desire to make regulations regarding the existence of individual PT in the Work Copyright Law, namely to make it easier for micro and small business actors to establish legal business entities without having to go through complicated procedures. Maybe from the name alone we already know about micro and small businesses (UMK), the criteria for micro and small businesses have capital below IDR 1,000,000,000 (one billion Rupiah). The criteria for a small business means capital above Rp. 1,000,000,000 (one billion Rupiah) up to Rp. 5,000,000,000 (five billion Rupiah). Thus it would be a shame if an individual PT were to go bankrupt just like a PT in general. Because an individual PT is only established by one person with a capital of under IDR 5,000,000,000 (five billion Rupiah).

Because As in Article 24 paragraph (1) of Law 37 of 2004 concerning bankruptcy and postponement of debt payment obligations which regulate:

The debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate, from the date the bankruptcy declaration decision is pronounced.

Therefore, the legal consequence of bankruptcy for an individual is that by law he loses his right to control and manage his wealth. With these provisions, is it not excessive if an individual PT can immediately go bankrupt if it fulfills the elements of bankruptcy contained in Article 2 paragraph (1) of Law 37 of 2004 concerning bankruptcy and PKPU without any other mitigating procedures so that bankruptcy efforts is the last resort in decision making (*ultimum remedium*).

A bankruptcy application can be made if it fulfills several conditions and procedures in accordance with the provisions of Law Number 37 of 2004 concerning bankruptcy and PKPU. The requirements for a bankruptcy application that must be met are:

Article 2 paragraph (1) Law no. 37 of 2004 concerning bankruptcy and PKPU.

A debtor who has two or more creditors and does not pay off at least one debt that is due and payable is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors.

The petitioner as referred to in paragraph (1) may also be submitted by the Attorney General's Office for the public interest.

Applicant for Bankruptcy Statement by the Debtor.

Article 2 paragraph (1) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt expressly states that a debtor who has two or more creditors and does not pay at least one debt that is due and collectible can submit a request for a declaration of bankruptcy. In

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English terms, a bankruptcy petition filed by the debtor himself is called a voluntary petition. According to Sutan Remy Sjahdeini, this possibility indicates that the Law on Bankruptcy and Suspension of Obligations for Payment of Debt can not only be submitted for the benefit of creditors, but can also be submitted for the benefit of the debtor himself. (Remy, 2009)

Debtors who can apply for bankruptcy are debtors who have two or more creditors and do not pay at least one debt that is due and collectible. The provision that the debtor can apply for bankruptcy against himself is a provision adopted in many countries. Thus, it is a normal rule. However, this provision opens up the possibility for unscrupulous debtors to manipulate for their own interests. (Remy, 2009)

Bankruptcy application by creditor.

In contract law, the creditor means a party entitled to demand the fulfillment of an achievement from the debtor. Creditors have receivables. Receivables themselves are the right to demand the fulfillment of debts or achievements. Article 1 point 2 of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt stipulates that creditors are people who have receivables due to agreements or laws that can be collected before a court.

Article 2 paragraph (1) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt, stipulates that for debtors who have two or creditors and have at least one debt that is due and collectible, the debtor or creditor can apply for bankruptcy.

Bankruptcy petition by prosecutor (in the public interest)

Article 2 paragraph (3) of the Bankruptcy and Suspension of Obligations for Payment of Debt states that prosecutors can also apply for a declaration of bankruptcy against debtors who do not pay their debts as referred to in Article 2 paragraph (1) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt in the public interest. The elucidation of Article 2 paragraph (2) of the Bankruptcy and Suspension of Obligations for Payment of Debt Law explains that the prosecutor's office may submit a bankruptcy application on grounds of public interest, in the event that the requirements referred to in Article 2 paragraph (1) have been fulfilled and no one has filed for bankruptcy.

Regarding the application for bankruptcy for an individual PT, can it be carried out by the prosecutor? It will become a new polemic if the bankruptcy petition is carried out by a prosecutor who, if seen in article 2, paragraph 2, is based on the public interest. Because individual PT itself comes from small and micro businesses.

#### 4. CONCLUSION

From the discussion above, if asked whether an individual company can be bankrupt, the answer is yes. Because the form of an individual company is a legal entity, which is the same principle as a PT, the procedure for bankruptcy can also use the bankruptcy procedure for a PT, which is still guided by the Bankruptcy Law. However, regarding the government's desire to establish PT Perorangan Due in order to make it easier for micro and small business actors to establish legal business entities without having to go through complicated procedures. Also because individual PTs come from small and micro businesses, when an individual PT goes bankrupt it will be very detrimental for the owner of the individual PT. So from that, is it better to take civil legal action first before individual PTs are filed for bankruptcy. and bankruptcy efforts can be the last resort in the case of individual PT bankruptcy (ultimum remedium).

Whereas the Bankruptcy Petitioner was the party that took the initiative to file a lawsuit against the Commercial Court. If bankruptcy of an individual company is considered as a last resort in matters involving it, then the bankruptcy petitioner should be the party with the most authority in filing a bankruptcy petition at the Commercial Court. This needs to be considered in order to ensure legal certainty for the litigants. So that the Bankruptcy Petitioner against the Individual Company is the creditor as well as the Individual Company itself as the debtor.

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