


Comparing an Individual Limited Liability Company in Indonesia and a Single-Member Limited Liability Company Owned by an Individual in Vietnam

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Abstract

Introduction: The recognition of Individual LLCs is a concrete step from the government to support micro and small enterprises, which triggers Indonesia's economic growth. However, improvements to the regulation of Individual LLCs are needed immediately.

Purposes of the Research: The research aims to explain and analyze the regulatory comparison of an Individual LLC in Indonesia and a Single-Member LLC owned by an Individual in Vietnam.

Methods of the Research: The type of research is normative legal research with statutory and comparative approaches. Data was collected using library research with qualitative analysis.

Results of the Research: The results can see from various aspects, such as the definition, company establishment, organizational structure, rights and obligations of company founders, and conversion. In Indonesia, the definition is outlined in Regulation of the Minister of LHR Number 21/2021, while in Vietnam is regulated in Law on Enterprises 2020. An Individual LLC in Indonesia can only establish by an individual, whereas in Vietnam, the owner of the Single-Member LLC can be an organization or an individual. Indonesia only knows the Company's Director, while there are President and a Director/General Director in Vietnam. The rights and obligations of the owner of an Individual LLC in Indonesia are not explicitly regulated, while Vietnam regulates it. It's possible to convert only an Individual LLC into a Capital Partnership LLC in Indonesia, while in Vietnam, it is possible to change either way. Evaluation and improvement of the regulation of Individual LLCs in Indonesia are urgently needed to create a firm legal umbrella for micro and small business actors.

Keywords: Company Law; Individual Company; Limited Liability Company; Single-Member Company.

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INTRODUCTION

Since 2000, Vietnam has made a significant evolution of the *Doi Moi* policy, resulting in the country's increasing integration into the regional and global economy. During this period, the party-state has passed legislation in investment and trade to foster private enterprises and foreign direct investments (FDIs) as reflected clearly in the establishment of the first stock market in 2000 and a series of bilateral trade agreements.¹

In recent years, Vietnam has become a rising star in Southeast Asia. The country has been going through a dramatic economic transformation and is one of the fastest-growing countries in the world. According to the World Bank, Vietnam has more than 745 listed

¹ Minh Nguyen, Jo Bensemann, and Stephen Kelly, "Corporate Social Responsibility (CSR) in Vietnam: A Conceptual Framework," *International Journal of Corporate Social Responsibility* 3, no. 1 (December 9, 2018): 1-12, <https://doi.org/10.1186/s40991-018-0032-5>.

companies on the stock exchange accounting for 68.6% of its Gross Domestic Product (GDP) in 2020. This is a huge jump compared to only 24 listed companies in 2004.²

Every facet of socioeconomic life is affected by COVID-19, which has a detrimental effect on worker income, employment, commercial activity, economic growth, and employment. But Vietnam swiftly implemented strong solutions in response to these shocks, first controlling the disease's spread and then boosting the country's economy. This approach has demonstrated early effectiveness in managing the epidemic, halting its long-term (more than three months) spread across the community, and promoting socioeconomic development initiatives, particularly in the tourist sector.³

Vietnam's GDP grew by 8% in 2022, above its average rate of 7.1% in 2016-2019.⁴ A country with a large GDP value with a high growth rate, a friendly business environment, and supported modern infrastructure facilities will be able to attract FDI.⁵ Part of Vietnam's investment attractiveness is its "golden population structure". With over 95 million residents, Vietnam possesses the 14th largest population in the world. About 60% of the SRV's citizens are under 35 years old, which results in two working people per dependent person. Vietnam's manpower is well trained while its cost is among the cheapest in Asia.⁶ Moreover, the Vietnamese government has issued stable long-term policies and regulations so that companies can be sure that they will make future business plans and expand investments and apply them equally to foreign countries.⁷

All the facts described above show that the state of Vietnam should be used as an example for Indonesia, especially regarding the enterprise law that applies in Vietnam. Companies in Vietnam are subject to Law on Enterprises Number 59/2020/QH14 which was ratified on June 17th, 2020 (Law on Enterprises 2020). In this regulation, in terms of the number of members in the company, limited liability companies (LLC) are classified into Multi-Member LLCs and Single-Member LLCs.

The regulation regarding Single-Member LLC is contained in Section 2 of the Law on Enterprises 2020, Article 74 to Article 87. A Single-Member LLC in Vietnam is similar to an Individual LLC (*Perseroan Terbatas Perorangan*) in Indonesia. An Individual LLC was first recognized as an individual legal entity that meets the criteria for micro and small businesses in Law Number 11/2020 concerning Job Creation (Job Creation Law).

In research entitled "Dualism in the Law on the Establishment of Limited Liability Companies After the Enactment of the Job Creation Law", compiled by Siti Thali'ah, et.al., it was found that the enactment of the Job Creation Law did not result in dualism in company law, because the Job Creation Law only change and add several provisions that were not previously regulated in the Company Law so that the provisions related to the

² Berita Satu, "Vietnam: Kekuatan Ekonomi Digital Baru Di Asia Tenggara," 2022, <https://www.beritasatu.com/dunia/849741/vietnam-kekuatan-ekonomi-digital-baru-di-asia-tenggara>.

³ Phung T. M. Hanh et al., "The Impact of Covid-19 Pandemic on Vietnamese Enterprises," *European Journal of Development Studies* 2, no. 3 (May 19, 2022): 32-35, <https://doi.org/10.24018/ejdevelop.2022.2.3.101>.

⁴ The World Bank, *Taking Stock, March 2023: Harnessing The Potential of The Services Sector For Growth* (USA: Washington DC, 2023).

⁵ Sony Hendra Permana and Edmira Rivani, "Pengaruh Produk Domestik Bruto, Inflasi, Infrastruktur, Dan Risiko Politik Terhadap Investasi Langsung Asing Di Indonesia," *Jurnal Ekonomi & Kebijakan Publik* 4, no. 1 (2013): 75-87.

⁶ Evgeny Kanaev, Nguyen Quang Thuong, and Vi Thi Huong Hue, "The Digitalization of Business: Vietnam's Perspective," *The Russian Journal of Vietnamese Studies* 3, no. 1 (2019): 35-46.

⁷ Nguyen Ngoc Nguyen, "Research on Risks and Chances for Foreign Companies When Looking for Business Opportunities in Vietnam," *Journal of Positive School Psychology* 6, no. 4 (2022): 5506-12.

new law replaced the old law that applies here.⁸ There had been a change in the paradigm of the LLC as a capital association after the entry into force of the Job Creation Law, namely in the form of an expansion of the LLC concept from a capital association to not only a capital association because the establishment of an Individual LLC for Micro and Small Enterprise (MSE) was founded by 1 (one) person.⁹

Anak Agung Ayu Intan Puspadewi's research entitled "Provisions for the Establishment of Limited Liability Companies After the Enactment of Law Number 11 of 2020 concerning Job Creation" found that the establishment of LLC that met the criteria for micro and small businesses after the enactment of Job Creation that is, a company can be founded by one person based on a statement of company establishment without using a notarial deed. Individual companies that meet the criteria for micro and small businesses must meet the requirements for basic capital and sales proceeds from micro or small businesses.¹⁰ Another study also explains that the Job Creation Law has significantly changed LLC regulations in Indonesia, especially those regulated in Company Law (Law Number 40/2007), namely, first, the mandatory provisions for companies to be founded by 2 (two) people or more do not apply to companies that meet the MSEs criteria; secondly, related to changes in LLC capital arrangements, the minimum capital arrangements for LLC have been removed and determined based on the decision of the founder of the Company; third, the establishment of an LLC that meets the criteria for MSEs can be carried out without going through a notarial deed; fourth, the founders and shareholders of LLC for MSEs are only individuals.¹¹ The results of this research are similar to the research entitled "Legal Protection of Individual Limited Liability Companies Based on Law Number 11 of 2020 concerning Job Creation", conducted by Beamezar Daffa Alkautsar and Denny Suwondo. This research found that the changes to LLC regulations in the Job Creation Law made it very easy for MSE business owners to establish their own companies. This can be seen in terms of the establishment process, the minimum nominal capital is not specified, and the establishment of an LLC does not require a Notarial deed.¹² Yudi Kornelis' research found that there is ease in forming Individual LLCs which have similar characteristics and protection to Capital Partnership Companies, providing innovation and legal renewal in the company's legal regime in Indonesia. This certainly creates efficiency and provides convenience for entrepreneurs, who later want to form a legal business entity and provide an increase in the EoDB assessment index in Indonesia.¹³

Another research entitled "Shifting the Paradigm for the Establishment of Limited Liability Companies in the Job Creation Law" by Setijadi Sekarasih, et.al., found that the shift in the concept of Limited Liability Companies with the introduction of Individual Companies must be tested and studied continuously because the government does not think about the effectiveness of enforcing the norms. The absence of a GMS and Board of

⁸ Siti Thalí'ah Atina, Eddy Purnama, and Efendi Efendi, "Dualisme Hukum Pendirian Perseroan Terbatas Pasca Berlakunya Undang-Undang Cipta Kerja," *Jurnal USM Law Review* 5, no. 2 (2022): 466-77.

⁹ Desak Putu Dewi Kasih Kasih et al., "Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal," *Arena Hukum* 15, no. 1 (April 28, 2022): 20-37, <https://doi.org/10.21776/ub.arenahukum.2022.01501.2>.

¹⁰ Anak Agung Ayu Intan Puspadewi, "Ketentuan Pendirian Perseroan Terbatas Setelah Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Analisis Hukum* 5, no. 1 (April 25, 2022): 14-25, <https://doi.org/10.38043/jah.v5i1.3383>.

¹¹ Yuliana Duti Harahap, Budi Santoso, and Mujiono Hafidh Prasetyo, "Pendirian Perseroan Terbatas Perseorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja," *NOTARIUS* 14, no. 2 (2021): 725-38.

¹² Beamezar Daffa Alkautsar and Denny Suwondo, "Perlindungan Hukum Perseroan Terbatas (PT) Perorangan Berdasarkan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Ilmiah Sultan Agung*, September 1, 2022, 329-40.

¹³ Yudi Kornelis, "Implikasi Hukum Perseroan Perseorangan Terhadap Indeks Ease of Doing Business Indonesia," *Jurnal Yustisiabel* 6, no. 2 (October 2022): 132-51.

Commissioners in an Individual Company will greatly influence the responsibility mechanism for company assets and personal assets, namely the absence of a check and balances and supervision mechanism which has the potential to violate the principles of good corporate governance such as transparency, accountability and the principle of responsibility.¹⁴ Putu Devi Yustisia Utami and Kadek Agus Sudiarawan in their research, found that the regulation of Individual LLC organs in Government Regulation No. 8/2021 is inconsistent with Job Creation Law and Company Law, which can have implications for legal uncertainty and the binding force of the Government Regulation itself.¹⁵

Mutia Ria Bonita's research entitled "Comparison of Regulations Concerning Individual Limited Liability Companies for Micro and Small Enterprises in Indonesia and the United Kingdom" found that: first, regulations in Indonesia, specifically regulations regarding LLCs, are regulated in Job Creation Law and Government Regulation, whereas in the United Kingdom regulations regarding Individual companies are made into one unit with other forms of companies in the UK Companies Act 2006. There are several similarities between Individual companies in Indonesia and the United Kingdom, namely that they both have legal entity status. Second, establishment based on the Job Creation Law in Indonesia, to establish a private company, a statement of establishment is required which contains the objectives, business activities, authorized capital, and other information relating to the establishment of the Company, registered electronically with the Minister. Meanwhile, in the United Kingdom, to establish a company, registration is required through registration of company shareholders with a single name and address and accompanied by a statement that the company only has one shareholder based on the applicable provisions, namely the UK Companies Act 2006. Third, the Organs of Individual Companies in Indonesia are only consisting of Directors who also serve as shareholders. In contrast to the United Kingdom, there are two organs, namely the Director and General Meeting (GMS). This GMS only consists of one shareholder. Lastly, there is no minimum requirement for capital for individual companies in Indonesia or the United Kingdom. In Indonesia, Individual companies are required to have the authorized capital of the company, while the size of the authorized capital of the company is determined by the founder's decision.¹⁶

Indah Siti Aprilia in research entitled "Legal Aspects of Shareholders in Companies with One Shareholder (Comparative Study of Indonesia and China)" found that Indonesia and China both have a company with one shareholder. However, what is different between Indonesia and China is the company registration mechanism and the aspects of responsibility carried out by a shareholder in the company.¹⁷ Research conducted by Khrisna Adjie Laksana and Tjhong Sendrawan with the title "Comparison of the Development of the Establishment of Limited Liability Companies in Indonesia and the Netherlands" reveals that the changes occurring in both Indonesia and the Netherlands are aimed at making it easier for people to start businesses in the two countries. Companies in the Netherlands continue to apply legal entity principles to LLCs established in the Netherlands, such as the principle of separation of assets and are still established by 2 (two)

¹⁴ Setijadi Sekarasih et al., "Pergeseran Paradigma Pendirian Perseroan Terbatas Dalam Undang-Undang Cipta Kerja," *Jurnal Ius Constituendum* 8, no. 2 (2023): 207-24.

¹⁵ Putu Devi Yustisia Utami and Kadek Agus Sudiarawan, "Perseroan Perorangan Pada Usaha Mikro Dan Kecil: Kedudukan Dan Tanggung Jawab Organ Perseroan," *Jurnal Magister Hukum Udayana* 10, no. 4 (December 2021): 769-81.

¹⁶ Mutia Ria Bonita, "Komparasi Regulasi Tentang Perseroan Terbatas Perseorangan Bagi Usaha Mikro Dan Kecil Negara Indonesia Dan United Kingdom," *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 12, no. 1 (June 2023): 110-18.

¹⁷ Indah Siti Aprilia, "Aspek Hukum Pemegang Saham Dalam Perseroan Dengan Satu Pemegang Saham (Single Share-Holder) (Studi Komparasi Indonesia Dengan China)," *Supremasi Jurnal Hukum* 3, no. 1 (2020): 1-14.

people. The changes that occur are in the initial capital for the establishment and the LLC's supervision system.¹⁸

Based on previous studies, there is a novelty in this research because this comparative legal research conducted by the research team was able to describe the similarities and differences of regulation in Indonesia and Vietnam. The research question is "How is the regulatory comparison of an Individual LLC in Indonesia and a Single-Member LLC owned by an Individual in Vietnam?". The research aims to explain and analyze the regulatory comparison between an Individual LLC in Indonesia and a Single-Member LLC owned by an Individual in Vietnam. This research has an urgency to provide input for the Indonesian government in improving regulations regarding Individual LLCs.

METHODS OF THE RESEARCH

The type of research used by the Research Team is normative legal research. Normative legal research is also known as doctrinal legal research because this research is conducted or aimed only at written regulations or other legal materials.¹⁹ To answer the research question, the Research Team used secondary data in the form of primary, secondary, and tertiary legal materials. After the data have been collected, the researcher has to sum up the collected data and organize it in such a manner that will yield answers to the research questions.²⁰ The data collection method used was library research. A literature study is an activity of collecting data which is carried out through the utilization of resources originating from the library to obtain research data.²¹ The Research Team uses statutory and comparative approaches. The statute approach is done by examining all laws and regulations related to the handled legal issues. Meanwhile, the comparative approach is done by comparing the law of a country with the laws of one or more other countries regarding the same matter.²² Comparative studies in a broad sense are complex studies that include a combination of different methods.²³ Because the objective of this study is to examine the quality of the substance of legal norms, the nature of the appropriate analysis is qualitative, meaning that the formulation of justification is based on the quality of the opinions of jurists, doctrines, theories, as well as from the formulation of the legal norms themselves.²⁴

RESULTS AND DISCUSSION

A. First Aspect: Definition

Indonesia

The Job Creation Law has undergone formal review at the Constitutional Court, and on November 25th, 2021, the Constitutional Court handed down a decision on the case for the Formal Review of the Job Creation Law against the 1945 Constitution of the Republic of

¹⁸ Khrisna Adjie Laksana and Tjhong Sendrawan, "Perbandingan Perkembangan Pendirian Perseroan Terbatas Di Indonesia Dan Belanda," *Jurnal USM Law Review* 6, no. 3 (2023): 1338–54.

¹⁹ Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2008).

²⁰ Chunuram Soren, "Legal Research Methodology: An Overview," *Journal of Emerging Technologies and Innovative Research (JETIR)* 8, no. 10 (2021): d442–84.

²¹ Mustika Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor Nasional, 2004).

²² Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi* (Jakarta: Kencana Prenada Media, 2016).

²³ R G Bolbakov, A V Sinityn, and V Ya Tsvetkov, "Methods of Comparative Analysis," *Journal of Physics: Conference Series* 1679, no. 5 (November 1, 2020): 1–6, <https://doi.org/10.1088/1742-6596/1679/5/052047>.

²⁴ Meray Hendrik Mezak, "Jenis, Metode, Dan Pendekatan Dalam Penelitian Hukum," *Law Review* V, no. 3 (2006): 85–97.

Indonesia through Decision Number 91/PUU-XVIII/2020. In the ruling, it was stated that the establishment of the Job Creation Law was contrary to the 1945 Constitution of the Republic of Indonesia and did not have conditionally binding legal force as long as it was not interpreted as “revisions were not made within 2 (two) years from the date this decision was pronounced”.²⁵

To implement the Constitutional Court Decision Number 91/PUU-XVIII/2020, the Job Creation Law was replaced through Government Regulation in Lieu of Republic of Indonesia Law Number 2/2022 concerning Job Creation. On March 31st, 2023, Government Regulation in Lieu of the Republic of Indonesia Law Number 2/2022 concerning Job Creation was enacted into law in Law Number 6/2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2/2022 concerning Job Creation to Become Law (Law Number 6/2023).

One of the insert articles added to Law Number 40/2007 by Law Number 6/2023, namely Article 153A of Law Number 40/2007 stipulates that a company that meets the criteria for micro and small businesses can be founded by 1 (one) person based on a statement of the establishment made in the Indonesian language. The intended company is better known as an Individual LLC.

Although both were founded by only one person, an Individual LLC is different from an individually owned business (*perusahaan perorangan*) which was previously known because an individually owned business is not a legal entity based on the laws and regulations in Indonesia. In addition, the separation of responsibilities between owners and the Individual LLC is a differentiator between the Individual LLC and individually owned business.²⁶

The founder of an Individual LLC has limited liability. There are three purposes for the existence of limited liability for founders in the Company. First, limited liability aims to protect the founder from larger losses beyond what the founder has invested. Second, the founder can transfer the risk of potential business failure to the Company's creditors. Third, to encourage investment and facilitate the Company's capital accumulation. The principle of limited liability generally has two advantages. First, limited liability can encourage economic efficiency. Second, limited liability provides access for each person to minimize risks in their business activities so that that person can generate the expected profits.²⁷

The definition of an Individual LLC is not regulated in the Job Creation Law and Law Number 6/2023. An Individual LLC is an individual legal entity that meets the criteria for micro and small businesses as stipulated in the laws and regulations regarding micro and small businesses. This definition is regulated in Article 2 (3) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 21/2021 concerning Requirements and Procedures for the Registration of Establishment, Change, and Dissolution of an LLC Legal Entity (Regulation of the Minister of LHR Number 21/2021).

Vietnam

²⁵ BPSDM Kementerian Hukum dan HAM RI, “Yasonna: Pemerintah Patuhi Putusan MK Tentang UU Cipta Kerja Demi Kepastian Hukum,” <https://bpsdm.kemerkumham.go.id/berita-utama/yasonna-pemerintah-patuhi-putusan-mk-tentang-uu-cipta-kerja-demi-kepastian-hukum>, February 25, 2023.

²⁶ Kantor Wilayah Sulawesi Selatan Kementerian Hukum dan HAM Republik Indonesia, “Perseroan Perorangan,” accessed September 29, 2022, <https://sulsel.kemerkumham.go.id/layanan-publik/pelayanan-hukum-umum/layanan-administrasi-hukum-umum/perseroan-perorangan>.

²⁷ Sulasi Rongiyati, “Syarat Pendirian Dan Tanggung Jawab Pemegang Saham Perseroan Perorangan,” *Jurnal Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 14, no. 1 (June 2023): 104–21.

The regulation regarding Single-Member LLCs is contained in Section 2 of the Law on Enterprises 2020, Article 74 to Article 87. Some of the main provisions include but are not limited to: the definition and acquisition of legal entity status, capital contribution, rights and obligations of the owner, exercising the owner's rights in special cases, the organizational structure of a Single-Member LLC owned by the organization, the organizational structure of a Single-Member LLC owned by an individual, the responsibilities of each organ of the company, increasing and decreasing charter capital.

In Article 4 point 7 of the Law on Enterprises 2020, it is explained that a "limited liability company" can be a Single-Member LLC or a Multiple-Member LLC. A Single-Member LLC is a business entity owned by one organization or an individual (hereinafter referred to as the "owner"). The owner's responsibility for the company's debts and other obligations must be the same as the capital in the company's charter. This is as stated in Article 74 (1) of the Law on Enterprises 2020. Thus a Single-Member LLC owned by an individual in Vietnam is similar to an Individual LLC that is recognized in Indonesia.

B. Second Aspect: Company Establishment

Indonesia

The Individual LLC is established by Indonesian Citizens by filling out a Statement of Establishment in the Indonesian language. The statement of establishment is registered electronically with the Minister of Law and Human Rights of the Republic of Indonesia by filling in the form, which contains: a) the name and domicile of the Individual LLC; b) the period of establishment of the Individual LLC; c) the aims and objectives and business activities of the Individual LLC; d) the amount of authorized capital, issued capital, and paid-up capital; e) nominal value and amount of shares; f) the address of the Individual LLC; and g) full name, place and date of birth, occupation, place of residence, identification number, and tax identification number of the founder as well as the director and shareholder of an Individual LLC. This is as stated in Article 6 and Article 7 of Government Regulation Number 8/2021.

Individual companies in the Netherlands are business entities without legal personality or are not legal entities, in contrast to Indonesia which recognizes individual companies as legal entities as confirmed in the Job Creation Law and Government Regulation Number 8/2021. Individual companies, both in the Netherlands and in Indonesia, can be established without a deed made by a Notary.²⁸

Abigail Prasetyo's research entitled "Single Ownership of Limited Liability Companies in the Job Creation Law Based on Legal Entity Theory", explains that an Individual LLC according to legal entity theory, indeed is a legal entity. However, the purpose of an Individual LLC which is generally stated in the deed of establishment cannot yet be answered with certainty, because the process of establishing an Individual LLC is very simple, namely simply filling out the form electronically at the Indonesian Ministry of Law and Human Rights.²⁹

However, Diyan Isnaeni's research found that establishing an LLC only through a statement letter does not guarantee the legality of the documents and the identity of the

²⁸ Laksana and Sendrawan, "Perbandingan Perkembangan Pendirian Perseroan Terbatas Di Indonesia Dan Belanda."

²⁹ Abigail Prasetyo, "KEPEMILIKAN TUNGGAL PERSEROAN TERBATAS DALAM UU CIPTA KERJA BERDASARKAN TEORI BADAN HUKUM," *Jurnal Ilmu Hukum: ALETHEA* 5, no. 1 (June 21, 2022): 39-54, <https://doi.org/10.24246/alethea.vol5.no1.p39-54>.

founder. Therefore, a deed of establishment of an LLC made by a notary is still needed to guarantee the legality of the LLC, the validity of the documents, and the identity of the founder, even though it is only an LLC for Micro and Small Businesses.³⁰

An Individual LLC is established by an Indonesian Citizen who is at least 17 (seventeen) years old and is legally competent. An Individual LLC obtains the status of a legal entity after being registered with the Minister of Law and Human Rights of the Republic of Indonesia (Minister) and obtaining an electronic certificate of registration. Individual LLC that has obtained legal entity status is announced by the Minister on the official website of the directorate general which carries out duties and functions in the field of general legal administration. The company's owner can only establish companies for micro and small businesses in the amount of 1 (one) company for micro and small businesses within 1 (one) year.

Vietnam

In the Decree on Enterprise Registration Number 01/2021/ND-CP (Decree on Enterprise Registration), dated January 4th, 2021, Article 5 (1) stipulates that establishing enterprises is the right of every entity, and this right is protected by the State. The enterprise's founder or the enterprise has to fully and promptly fulfill the obligation to apply for enterprise registration and disclose information about the establishment and operation of the enterprise under the regulations herein and relevant legislative documents.

Article 24 of the Decree on Enterprise Registration stipulates that the application for registration of a Single-Member LLC is as follows: 1) Application form for enterprise registration; 2) The company's charter; 3) Copies of the following documents: a) Legal documents of the enterprise's legal representative; b) Legal documents of the company's owner that is an individual; Legal documents of the company's owner that is an organization (except for the State); Legal documents of the authorized representative and letter of appointment of authorized representative. If the company's owner is a foreign organization, copies of legal documents of that organization must be legalized; c) Investment registration certificate if the enterprise is founded by a foreign investor or foreign-invested business entity in accordance with the Law on Investment and its guiding documents.

The initially registered charter capital of a Single-Member LLC is the total assets promised by the owner and shall be written in the company's charter. The owner shall contribute adequate and correct assets as promised when applying for company registration within 90 days from the issuance date of the Certificate of Enterprise Registration. The time required to transfer or import the contributed assets and for completing ownership transfer procedures will be added to these 90 days. During this period, the owner shall have rights and obligations that are proportional to the promised capital. This provision is as stated in Article 75 of the Law on Enterprises 2020. A Single-Member LLC has the status of a juridical person from the day on which the Certificate of Enterprise Registration is issued.

C. Third Aspect: Organizational Structure

Indonesia

³⁰ Diyan Isnaeni, "Peran Notaris Dalam Pendirian PT Usaha Mikro Dan Kecil," *Jurnal Hukum Dan Kenotariatan* 5, no. 2 (May 2021): 202-17.

Law Number 6/2023 does not specifically regulate the organizational structure contained in an Individual LLC. However, it can be interpreted that the founder, who is a person, is the sole shareholder and also serves on the Company's Board of Directors. The only position regulated in Law Number 6/2023 that runs an Individual LLC is the Director. The Director of the Company for micro and small businesses carries out the management of the company for the benefit of the company following the aims and objectives of the company. The Director is also authorized to carry out management in accordance with policies deemed appropriate, within the limits specified in Law Number 6/2023 and/or a statement of establishment of the company. This is as stipulated in Article 153D of Law Number 6/2023.

Keavin Frizky Maria in her research entitled "Individual Companies and Their Liability to Third Parties: Comparison of Germany and Indonesia" revealed that the application of the one-tier system concept in Indonesia has differences from the one-tier system adopted by Germany. In Germany, the company's organs still consist of the GMS, Directors, and Commissioners who can hold concurrent positions on the Board of Directors and Board of Commissioners, whereas in Indonesia, shareholders only hold concurrent positions as Directors, without regulation of the Board of Commissioners' organs.³¹

The application of the business judgment rule theory to Individual LLC may also boost the organization's competitiveness by encouraging creativity from its leadership, enabling it to manage Individual LLC more effectively and fearlessly in the face of numerous risks. From a progressive legal standpoint, as Individual LLC and Capital Partnership LLC are substantively identical in general, the reconstruction of the application of the business judgment rule doctrine for ILLC may be completed by similar legal construction.³²

However, Shinta Pangesti's research found that although the presence of an individual LLC, on the one hand, can be a stimulus for national economic recovery, it cannot be denied that there are still weaknesses in the regulation which are feared to be exploited by parties with bad intentions such as the actions of shareholders that use the company not following the stated company's goals or for personal interest of the owners or shareholders.³³

3.3.2 Vietnam

In the Law on Enterprises 2020, there are differences in the organizational structure of a Single-Member LLC owned by an organization and an individual. A Single-Member LLC owned by an organization must adopt one of the two models below: a) A company with a President and the Director/General Director; b) A company with a Board of Members and the Director/General Director.

A Single-Member LLC owned by an individual shall have a President and a Director/General Director. The company's owner shall be the President who may concurrently hold the position of Director/General Director or employ another person as Director/General Director. The rights and obligations of the Director/General Director shall be specified in the company's charter and the employment contract.

³¹ Keavin Frizky Maria, "Perseroan Perorangan Dan Pertanggungjawabannya Terhadap Pihak Ketiga: Perbandingan Jerman Dan Indonesia," *Lex Prudentium* 2, no. 1 (May 2023): 57-75.

³² Lisma Lumentut and Liberthin Palullungan, "The Reconstruction of the Implementation from Business Judgment Rule Doctrine in Individual Limited Liability Companies: A Progressive Legal Review," *SASI* 29, no. 4 (October 30, 2023): 656, <https://doi.org/10.47268/sasi.v29i4.1639>.

³³ 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 (April 29, 2021): 117-31, <https://doi.org/10.33331/rechtsvinding.v10i1.650>.

The company's President shall be designated by the company's owner, perform the owner's rights and obligations in the owner's name; perform the company's rights and obligations in the company's name, except the rights and obligations of the Director/General Director; take responsibility to the law and the owner for his/her performance as prescribed by the company's charter, this Law and relevant laws. In a single-member LLCs, the company owner has more autonomy with regard to decisions made about the company than those of multi-member LLCs.³⁴

The Board of Members or the company's President shall designate or hire the Director/General Director within a term of office not exceeding 5 (five) years to manage the company's everyday business. The Director/General Director shall be responsible for the law and the Board of Members or the company's President for his/her performance. The President of the Board of Members, another member of the Board of Members, or the company's President may concurrently hold the position of Director/General Director unless otherwise prescribed by law or the company's charter.

Article 82 (2) Law on Enterprises 2020 regulates the rights and obligations of a Director/General Director as follows: a) Organize the implementation of resolutions and decisions of the Board of Members or the company's President; b) Decide everyday operating issues of the company; c) Organize the implementation of the company's business plans and investment plans; d) Issue the company's rules and regulations; e) Designate, dismiss the company's executives, except those within the jurisdiction of the Board of Members; f) Enter into contracts in the company's name, except those within the jurisdiction of the President of the Board of Members or the company's President; g) Propose the company's organizational structure; h) Submit annual financial statements to the Board of Members or the company's President; i) Propose plans for the use of profits or settlement of business losses; j) Recruit employees; k) Other rights and obligations specified in the Company's Charter and the employment contract.

D. Fourth Aspect: Rights and Obligations of the Owner of the Company

Indonesia

In the Job Creation Law and Government Regulation Number 8/2021, there are no explicit arrangements about the rights and obligations of the owner of the Individual LLC but implied in the provisions. Some of the rights granted to the owner include: 1) The right to change the statement: The statement of establishment of an Individual LLC can be amended more than 1 (one) time by changing the statement of an Individual LLC. The amendment is stipulated by a decision of the shareholder of an Individual Limited Liability Company which has the same legal force as the general meeting of shareholders. The change statement is submitted to the Minister electronically to obtain a change statement certificate. The change statement is valid since the issuance of the change statement certificate. This is as regulated in Article 6 of Government Regulation Number 8/2021. 2) The right to dissolve the company: The dissolution of an Individual LLC is regulated in Article 13 of Government Regulation Number 8/2021. The dissolution of an Individual LLC is stipulated by a decision of the shareholder of an Individual LLC which has the same legal force as the general meeting of shareholders as outlined in a statement of dissolution and notified electronically to the Minister. Dissolution of an Individual LLC occurs because: a) Based on the decision

³⁴ Thanh Vinh Nguyen, "The Inward Investment and International Taxation Review: Vietnam," 2023, <https://thelawreviews.co.uk/title/the-inward-investment-and-international-taxation-review/vietnam>.

of the shareholder of an Individual LLC which has the same legal force as the general meeting of shareholders; b) The period of establishment specified in the Statement of Establishment or its amendments has ended; c) Based on court order; d) With the repeal of bankruptcy based on a commercial court decision that has permanent legal force, the bankruptcy assets of an Individual LLC are not sufficient to pay bankruptcy costs; e) Bankruptcy assets of the Individual LLC that have been declared bankrupt are in a state of insolvency as stipulated in the law regarding bankruptcy and postponement of debt payment obligations; or f) The business license of an Individual LLC is revoked, thus requiring the Individual LLC to carry out liquidation by filling out a statement of dissolution.

Even though there are no regulations regarding the bankruptcy of Individual Companies, either in the Job Creation Law or in Government Regulation 8/2021, because the form of an Individual LLC is a legal entity, which has the same principles as an LLC, the bankruptcy procedures can also use bankruptcy procedures LLC, which remains guided by the Bankruptcy Law.³⁵ There are 2 (two) models of application of the legal consequences of individual LLC bankruptcy for directors, namely, the first is legal consequences that apply by law, and the second is legal consequences that apply according to the Rule of Reason.³⁶

Meanwhile, the obligations that can be summarized from the regulation of Individual LLC, include: 1) Obligation to change legal entity status: Article 9 Government Regulation Number 8/2021 stipulates that an Individual LLC must change its legal entity status to become a Capital Partnership LLC if: a) there is more than 1 (one) shareholder; and/or b) do not meet the criteria for micro and small businesses as stipulated in the provisions of laws and regulations regarding micro and small businesses. An Individual LLC before becoming a Capital Partnership LLC changes its status through a notarial deed and is registered electronically with the Minister. 2) Obligation to make financial reports: An Individual LLC is required to prepare financial reports. Financial reports are reported to the Minister by filling in the electronic report submission format no later than 6 (six) months after the end of the current accounting period. The format for submitting financial reports contains: a) a report on financial position; b) an income statement; and c) notes to the current year's financial statements. The Minister issues proof of receipt of financial reports electronically after the applicant fills out the form mentioned above.

Article 12 (1) of Government Regulation Number 8/2021 stipulates that Individual LLCs that do not submit financial reports are subject to administrative sanctions in the form of: a) written warning; b) termination of access rights to services; or c) revocation of legal entity status.

Vietnam

Article 76 and Article 77 of the Law on Enterprises 2020 specifically regulate the rights and obligations of the owner or founder of a Single-Member LLC. An owner who is an individual has the rights regulated in Article 76 (2) of the Law on Enterprises 2020, including: a) Draw up and revise the company's charter; b) Decide increase or decrease in the company's charter capital, transfer part or all of the company's charter capital to another

³⁵ Monica Agustina Gloria, "Kepailitan Perseroan Perorangan Dalam Undang-Undang Cipta Kerja," *Jurnal Panorama Hukum* 6, no. 1 (September 14, 2021): 24-31.

³⁶ Rahmadi Indra Tektona and Dwi Ruli Handoko, "Implikasi Hukum Pailitnya Perseroan Perorangan Terhadap Direksi Di Indonesia," *Jurnal Ilmiah Dunia Hukum* 6, no. 2 (April 2022): 115-29.

organization or individual; decide issuance of bonds; c) Decide the use of profits after the company's tax liabilities and other financial obligations have been fulfilled; d) Decide the company's reorganization, dissolution, or file for bankruptcy; e) Recover all assets of the company after the dissolution or bankruptcy process is complete; f) The right to decide on investment, business operation, and the company's administration, unless otherwise stipulated in the company's charter; g) Other rights prescribed by this Law and the company's charter.

The obligations of the owner of a Single-Member LLC are regulated in Article 77 of the Law on Enterprises 2020, among others: 1) Contribute charter capital fully and punctually; 2) Comply with the company's charter; 3) Separate the company's assets and the owner's assets. The owner is an individual who shall separate expenses of himself/herself and his/her family and those of the company's President, or General Director; 4) Comply with regulations of law on contracts and relevant laws while making purchases, sales, borrowing, lending, leasing, entering into contracts, and conducting other transactions between the company and the company's owner; 5) The company's owner may only withdraw capital by transferring part or all of the charter capital to another organization or individual. If the capital is withdrawn otherwise, the owner and relevant organizations and individuals shall be jointly responsible for the company's debts and other liabilities; 6) The owner must not withdraw profit when the company is unable to fully pay its debts and liabilities when they are due; 7) Other obligations prescribed by Law and the company's charter.

E. Fifth Aspect: Conversion

Indonesia

As stated in one of the obligations of the owner of the company to change the legal entity status of an Individual LLC to become a Capital Partnership LLC if: a) there is more than 1 (one) shareholder; and/or b) do not meet the criteria for micro and small businesses as stipulated in the provisions of laws and regulations regarding micro and small businesses. This is as regulated in Article 9 Government Regulation Number 8/2021. An Individual LLC before becoming a Capital Partnership LLC changes its status through a notarial deed and is registered electronically with the Minister. However, in Indonesia, the possibility of converting from a Capital Partnership LLC to an Individual LLC is not regulated. Thus, only a one-way change is possible from an Individual LLC to a Capital Partnership LLC.

Vietnam

Regarding the obligation to change the status of a Single-Member LLC to a Multi-Member LLC, it is regulated in Article 78 (1) of the Law on Enterprises 2020. In case the owner transfers or gives away part of the charter capital to one or some organizations and individuals or the company admits a new member, the company shall be converted accordingly and register the change in enterprise registration information within 10 days from the date of completion of the transfer or giveaway or admission of the new member.

Furthermore, the Decree on Enterprise Registration also stipulates application for registration in case of conversion from a Single-Member LLC into a Multi-Member LLC. The documents that must be fulfilled for this conversion are some of the documents listed in Article 23 (except paragraph 4 point c) and Article 26 (2) Decree on Enterprise Registration. Some of these documents include: 1) Application form for enterprise registration; 2) The company's charter; 3) List of members of the Multi-Member LLC; lists of founding

shareholders and shareholders that are foreign investors of the joint-stock company; 4) Copies of the following documents: a) Legal documents of the enterprise's legal representative; b) Legal documents of members or founding shareholders and foreign shareholders that are individuals; legal documents of members or founding shareholders and foreign shareholders that are organizations; legal documents of authorized representatives of members or founding shareholders and foreign shareholders that are organizations and their letters of appointment of authorized representatives. If a member or shareholder is a foreign organization, copies of legal documents of that organization must be legalized; 5) The contract for the transfer of stakes or documents proving completion of such transfer; the contract for a donation of stakes; the copy of the certificate of the inheritor's lawful right to inheritance; 6) The resolution or decision of the company's owner on capital mobilization and documents certifying the capital contribution by new members; 7) A written approval given by the investment registration authority for capital contribution or purchase of shares/stakes by foreign investors/foreign-invested business entities in case procedures for registration of capital contribution or purchase of shares/stakes must be followed in accordance with the Law on Investment.

Uniquely, it is also possible to convert from a Multi-Member LLC in Vietnam into a Single-Member LLC. Article 26 Decree on Enterprise Registration regulates the application for company registration in the event of conversion. In particular, Article 26 (3) of the Decree on Enterprise Registration stipulates in principle that in the event of a conversion from a Multi-Member LLC to a Single-Member LLC, the application for conversion registration must include the documents referred to in Article 24 of this Law but not including investment registration certificate as referred to in Article 24 paragraph 3 point c. The documents referred to include: 1) Application form for enterprise registration; 2) The company's charter; 3) Copies of the following documents: a) Legal documents of the enterprise's legal representative; b) Legal documents of the company's owner that are an individual; Legal documents of the company's owner that is an organization (except for the State); Legal documents of the authorized representative and letter of appointment of authorized representative. If the company's owner is a foreign organization, copies of legal documents of that organization must be legalized; 4) The contract for the transfer of stakes or documents proving completion of such transfer; the contract for a donation of stakes; the copy of the certificate of the inheritor's lawful right to inheritance; the merger contract or consolidation contract; 5) The resolution or decision and copy of the minutes of the meeting of the Board of Members of the Multi-Member LLC on conversion into a Single-Member LLC; 6) A written approval given by the investment registration authority for capital contribution or purchase of shares/stakes by foreign investors/foreign-invested business entities in case procedures for registration of capital contribution or purchase of shares/stakes must be followed under the Law on Investment.

Table 1. Comparison of an Individual LLC in Indonesia and a Single-Member LLC owned by an Individual in Vietnam

Aspects	Individual LLC in Indonesia	Single-Member LLC owned by an Individual in Vietnam
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Definition	The definition of an Individual LLC is not regulated in the Job Creation Law and Law Number 6/2023. An Individual LLC is an individual legal entity that meets the criteria for micro and small businesses as stipulated in the laws and regulations regarding micro and small businesses. This definition is regulated in Article 2 (3) of Regulation of the Minister of LHR Number 21/2021.	A Single-Member LLC is a business entity owned by one organization or an individual (hereinafter referred to as the "owner"). The owner's responsibility for the company's debts and other obligations must be the same as the capital in the company's charter. This is as stated in Article 74 (1) of the Law on Enterprises 2020.
Company Establishment	The Individual LLC is established by Indonesian Citizens by filling out a Statement of Establishment in the Indonesian language. An Individual LLC obtains the status of a legal entity after being registered with the Minister of Law and Human Rights of the Republic of Indonesia and obtaining an electronic certificate of registration.	Article 24 of the Decree on Enterprise Registration regulated the application for registration of a Single-Member LLC. The owner shall contribute adequate and correct assets as promised when applying for company registration within 90 days from the issuance date of the Certificate of Enterprise Registration. A Single-Member LLC has the status of a juridical person from the day on which the Certificate of Enterprise Registration is issued.
Organizational Structure	The only position regulated in Law Number 6/2023 that runs an Individual LLC is the Director.	A Single-Member LLC owned by an individual shall have a President and a Director/General Director.
Rights and Obligations of the Owner of the Company	In the Job Creation Law and Government Regulation Number 8/2021, there are no explicit arrangements about the rights and obligations of the owner of the Individual LLC but implied in the provisions.	An owner who is an individual has the rights regulated in Article 76 (2) of the Law on Enterprises 2020. The obligations of the owner of a Single-Member LLC are regulated in Article 77 of the Law on Enterprises 2020.
Conversion	The Obligation to change legal entity status from an Individual LLC into a Capital Partnership LLC is stipulated in Article 9 Government Regulation Number 8/2021. However, the possibility of converting from a Capital Partnership LLC to an Individual LLC is not regulated yet.	The obligation to change the status of a Single-Member LLC to a Multi-Member LLC is regulated in Article 78 (1) of the Law on Enterprises 2020. It is also possible to convert from a Multi-Member LLC in Vietnam into a Single-Member LLC as regulated in Article 26 (3) of the Decree on Enterprise Registration.

Source: Research Results from Research Team, 2023

CONCLUSION

Regulatory comparison between an Individual LLC in Indonesia and a Single-Member LLC in Vietnam can be seen from various aspects, particularly the definition, company establishment, organizational structure, rights and obligations of company founders, and conversion. The definition of an Individual LLC in Indonesia is outlined in Regulation of

the Minister of LHR Number 21/2021, while the definition of a Single-Member LLC owned by an Individual in Vietnam is regulated in the Law on Enterprises 2020. From the aspect of company establishment, an Individual LLC in Indonesia can only be established by an individual who meets the requirements by filling out a statement establishment and registering with the Minister of Law and Human Rights of the Republic of Indonesia. Whereas in Vietnam, the owner of the Single-Member LLC can be an organization or an individual, by preparing an application form, Company's Charter, and legal documents up to depositing capital by the founder. In terms of organizational structure, Indonesia only knows the Company's Director in Individual LLC, while there are President and a Director/General Director in Vietnam. The rights and obligations of the owner of an Individual LLC in Indonesia are not explicitly regulated, while Vietnam regulates it. It's possible to convert only an Individual LLC into a Capital Partnership LLC in Indonesia, while in Vietnam, it is possible to change either way. Improvements to the regulation of Individual LLCs need to be carried out immediately by reflecting on Vietnam regulations, for example, the arrangement regarding organizational structure with their respective duties and responsibilities. It can also follow the steps of the State of Vietnam in regulating the rights and obligations of the owner of a Single-Member LLC and the conversion from a Multi-Member LLC to a Single-Member LLC. Evaluation and improvement of the regulation of Individual LLCs in Indonesia are urgently needed to create a firm legal umbrella for micro and small business actors.

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