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Comparative Study of *Sole Proprietorship* Between Indonesia and the Netherlands

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Abstract. The Indonesian government at the end of 2020 has passed Law No. 11 of 2020 which was later replaced by Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 which aims to be able to provide ease of doing business and improve Indonesia's ease of doing business index (EoDB) ranking in the global eyes. The form of ease of doing business is the presence of a new form of Sole Proprietorhip for MSEs in Indonesia, namely PT Perseorangan, resulting in a paradigm shift of Limited Liability Companies established by agreement with registration. This type of normative research uses a comparative study approach that examines business law related to comparing the Sole Proprietorship form of business entity in Indonesia and the Netherlands. Examine in terms of the form of regulations governing, the form of business entity to its taxation, to the advantages and disadvantages of Sole Proprietorship in both countries.

Keywords - sole proprietorship; individual limited liability company; eenmanszaak

1 Introduction

The Indonesian government passed Law Number 11 of 2020 in November of 2020. Law No. 11 of 2020 is a collection of regulations that compiles various regulations into one big law called the *Omnibus Law*. The government then issued Government Regulation in Lieu of Law (Perpu) Number 2 of 2020 on Job Creation as a replacement for the law that had been issued two years earlier which was considered to have many shortcomings in the formulation process both formally and materially. But apart from that, Perpu No. 2 of 2022 on Job Creation (hereinafter referred to as Perpu Ciptaker) offers many conveniences and efficiencies that are expected to improve the business climate in Indonesia such as cutting the length of the bureaucratic chain and simplifying overlapping *hyper-regulation* so that it can be more effective.

Based on the *Ease of Doing Business (EoDB)* index, which is an assessment system of how easy it is to do business in a country,[1] there are several factors that become obstacles in doing business namely the ease of *starting a business, registering property*, *dealing with constructing* permits, and *enforcing* contracts. Reflecting on Indonesia's position in the *Ease of Doing Business* index in 2020,[2] Indonesia occupies the 73rd position globally which is expected to increase to the 40th position after the enactment of this Perpu Ciptaker by attracting investment both from within and outside the country which is able to have a significant impact with the expansion of employment to improve the national economy.

The change offered in response to one of the benchmark factors used in the EoDB index above is the ease of starting a business. The government responds to this by providing a new form of *legal person* that has never been known in the world of business law in Indonesia. The new form of legal entity since the birth of this Perpu Ciptaker is the Individual Limited Liability Company which is specifically for Micro and Small Enterprises (MSEs). This new form of legal entity is expected to have a significant positive impact on improving the business climate in Indonesia by making it easier to start and run a business.

When discussing the legal landscape in Indonesia, it is necessary to discuss the legal landscape of the Netherlands. Especially with regard to the world of business law and the form of *sole proprietorship* in the Netherlands. Given that the Netherlands is one of the countries that has a major influence on the formulation of law in Indonesia. Moreover, the Netherlands is positioned as one of the countries that has a business-friendly climate by occupying the 43rd position in the same EoDB index. Therefore, it is relevant to compare the two regulations governing *Sole Proprietorship* with regard to the practice of establishment, management, and taxation between Indonesia and the Netherlands.

Based on the preliminary description described above, the problem formulation that forms the basis for this research consists of three things, namely: 1). What is the form of *Sole Proprietorship* in Indonesia?; 2). What is

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the form of *Sole Proprietorship* in the Netherlands?; 3). How does *Sole Proprietorship* compare in Indonesia and the Netherlands?.

2 Methods

Legal research is an activity carried out systematically to examine the legal issues at hand. There are various types of legal research, one type of research used in carrying out this research is normative legal research. According to Prof. Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer the legal issues at hand.[3] Normative legal research can also be referred to as a type of *doctrinal* legal research, namely research that examines the law theoretically. This research also uses two forms of approach, namely a *comparative study* that compares existing regulations from two countries that are used to find similarities, differences and advantages and advantages of each regulation relating to the legal issues being studied.

The legal materials used in this research are divided into three types, namely primary legal materials which are the main source and become a direct reference in this research consisting of Regulation in Lieu of Law Number 2 of 2022; Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises; Government Regulation No. 8 of 2021 concerning the Company's Authorized Capital as well as the Registration of Establishment, Change, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises; Minister of Law & Human Rights Regulation No. 21 of 2021 concerning the Terms and Procedures for Registration of Establishment, Change, and Dissolution of Limited Liability Company Legal Entities; Burgerlijk Wetboek - Boek 2: Civil, Commercial and Family Law of the Kingdom of the Netherland; Wet- Inkomstenbelasting 2001; Handelsregisterwet 2007; along with related regulations originating from both countries. The next legal material is secondary legal material consisting of books, journals, and various documents that can provide an explanation of the research being carried out. And tertiary legal materials consist of the Big Indonesian Dictionary (KBBI) and Legal Dictionary. Then the legal materials that have been collected are then critically examined.

3 Results and Discussion

3.1 Form of Sole *Proprietroship* in Indonesia After the issuance of Perpu No. 02 of 2022

Micro, Small and Medium Enterprises (MSMEs) have had a significant impact on the turnover and growth of the national economy. The MSME sector is a business sector that is almost entirely very close to the basic needs of the community. So it cannot be denied that the MSME sector makes a very large contribution with a positive contribution of 61.07% to the total Gross Domestic Product (GDP),[4] and is able to become the main absorber of labor of 96.9% of the total national workforce.[5] However, MSMEs often experience various problems that hinder the development and growth of the business activities they carry out. In general, the problems faced by MSMEs are a less conducive business climate caused by a very long bureaucratic chain to start a business and a lack of adequate ability to access funding sources that can be used as capital to develop a business.

One of the problems faced by the MSME sector is that there are still few MSME actors who have a formal form of business entity, either a legal entity or a non-legal entity and there are still many MSME actors who use an informal form of business entity or without a clear business entity.[6] If reviewed further, MSMEs will have various advantages when they have a formal business form, apart from being able to provide legal certainty, it can also reach better access to capital through banks, increase income, and can have an impact on increasing state revenue from the tax sector. [7] Forms of business entities such as *Commanditaire Vennootschap* (CV) and Firma which are included as non-legal entities, as well as Cooperatives and Limited Liability Companies (PT) which are legal entities. [8].

Limited Liability Company (PT) is a form of business entity that is quite popular with business actors.[9] PT in English is referred to as *Limited Liability Company (LLC)* and *Naamloze Vennootschap (NV)* in Dutch. Based on Article 109 of Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation (Perpu Ciptaker) which amends Article 1 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (PT Law) states the definition of PT as follows:

> *"Limited Liability Company, hereinafter referred to as the Company, is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or an individual Legal Entity that meets the criteria of Micro and Small Enterprises as stipulated in laws and regulations concerning Micro and Small Enterprises".*

Given the important role of MSEs in supporting the national economy, the government is trying to provide breakthroughs to bring convenience to MSE actors. With the presence of this Perpu Ciptaker, two forms of Limited Liability Companies have been created, namely PT Persekutuan Modal (which will hereinafter be referred to as

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the Company) and PT Perseorangan.[10] Both forms of PT are legal entities created by law, which in Dutch is known as *recht persoon*, which becomes an *artificial person* (pseudo-human) who can carry out certain legal actions like a human being who will be represented by the organs of a company that absolutely exists,[8] such as suing or being sued before the court.

Company form is an association of capital deposited as a condition of establishment by at least two or more persons who bind themselves to each other in the Company establishment agreement. The pool of capital that has been deposited is then divided into sero-sero (shares) which then the responsibility for the Company as the owner of the shares is limited to the nominal value of the shares owned.[11] So that legally recognizes that a Company company is a different entity from its owner. This principle is referred to as limited liability, so that all the results of the company's work, both losses such as debt and profits, are not the direct responsibility of the shareholders. And the profits generated by the company will be distributed to shareholders in the form of dividends based on the percentage of shares owned.

However, this limited liability of shareholders according to Article 3 paragraph (2) of the Company Law can be eliminated based on certain conditions such as violations or omissions that blur the line between personal and business interests, namely:

a. The Company's requirements as a legal entity have not been or are not fulfilled
b. Shareholders either directly or indirectly utilize the company in bad faith for personal interests
c. Shareholders commit unlawful acts committed by the Company
d. Shareholders use the company's wealth so that the company cannot pay its debts

In the world of business law, this principle is also known as *"piercing the corporate* veil*"* or *"lifting the veil"* which means piercing *the veil* or opening the corporate veil.[11] This term states that shareholders are required to be fully responsible for the company's obligations both with themselves and with their personal assets.

The new form of PT which is a legal consequence of the birth of Perpu Ciptaker is the existence of PT Perseorangan. The requirement for the establishment of a PT which must be established by two or more people is exempted for Individual PTs in accordance with Article 7 paragraph (7) of the PT Law along with companies established by the state (BUMN, BUMD, and BUMDes), companies engaged in the capital market. PT Perseorangan is included as a *Sole Proprietorship* (Company), which is a company established and carried out by one entrepreneur with the aim of seeking profit or profit.[12] Based on Article 153E Perpu Ciptaker, it is stated that the founder and shareholder is an individual and not a legal entity.

PT Perseorangan has a corporate organ that is a *one tier system*,[8] which is a corporate organ consisting of directors who concurrently serve as shareholders without having a board of commissioners. This is in accordance with Article 7 paragraph (2) letter (g) of Government Regulation (PP) Number 08 of 2021,[13] which states that the founders of PT Perseorangan simultaneously serve as directors and shareholders. Where based on Article 153 letter (j) Perpu Ciptaker states that shareholders including in PT Perseorangan have the same principle as limited liability in the Company, namely not personally liable for more than the number of shares they own.

The establishment of a PT Perseorangan is relatively easy and simple. Unlike a Company which requires a deed of establishment made by a Notary, under Article 6 paragraph (3) it is stated that the establishment of a PT Perseorangan only requires filling out a Statement of Establishment. The statement of establishment is then registered to be authorized electronically by the Minister of Law and Human Rights.[14] The legal entity status of the individual company is obtained after it is registered with the Minister of Law and Human Rights.[15] PT Perseorangan is not obliged to publish in the Supplement to the State Gazette as a form of bureaucratic simplification. And with regard to the authorized capital required for establishment, it is adjusted to the existing MSE criteria. According to Article 35 paragraph (1) of PP No. 07 of 2021 (PP UMKM),[16] categorizes types of businesses based on the amount of business capital as follows:

a. Micro Business is a type of business with a maximum capital of IDR 1,000,000,000 excluding land and buildings;
b. Small Business is a type of business with a capital of more than Rp1,000,000,000 up to a maximum capital of Rp5,000,000,000.

Thus, the amount of authorized capital to establish a PT Perseorangan is Rp5,000,000,000 (five billion rupiah) without having a minimum limit on the authorized capital that must be issued. As for the Company, the authorized capital is at least 25% of the total authorized capital determined by the decision to establish an Individual PT. While each individual is limited to establishing only one PT Perseorangan in one year, but does not have a maximum limit for the establishment of a Company (PT Persekutuan Modal). PT Perseorangan is subject to an income tax (PPh) category tax burden of 0.5% of total income.[17] However, apart from that, the income tax imposed on the company has a maximum time limit of four years since it was registered.

Considering that PT Perseorangan has the main purpose of providing convenience for Micro and Small Business actors in doing business. Therefore, based on Article 9 paragraph (1) of PP No. 08 of 2021, PT Perseorangan must change its legal entity status to become a Company if there is an increase in shareholders to more than one person, then if there is an increase in the performance of PT Perseorangan so that it no longer meets the criteria as a Micro and Small Business. Apart from the MSE criteria based on the amount of authorized capital,

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the MSE criteria can also be seen from the amount of annual sales based on the MSME Government Regulation which is described as follows:

a. Micro Enterprises are businesses that generate annual sales of up to IDR 2,000,000,000.
b. A Small Business is a business that generates annual sales of at least IDR 2,000,000,000 to a maximum of IDR 15,000,000,000.

In connection with the need for PT Perseorangan to change the form of the company to PT Persekutuan Modal if it no longer meets the MSE criteria as described above, then to change the form of PT is to apply for a change in the status of the company's legal entity stipulated by a notarial deed. Furthermore, the notarial deed is registered electronically with the Minister of Law and Human Rights.

3.2 Form of Sole *Proprietroship* Business Entity in the Netherlands

When discussing Indonesian law, one cannot directly disassociate Indonesian law with that of the Netherlands. The concept of law in Indonesia is directly influenced by the concept of Dutch law where there has been a close contact for a long time. Especially with the world of business law in Indonesia, although today both have experienced developments in their respective paths. The concept of business law in Indonesia can be drawn to the Dutch Civil Code *(Burgelijk Wetboek).* The same applies to the concept of an individual company.

In the Netherlands, a *sole proprietorship* company is known as *Eenmanszaak* (literally meaning *'one-man business'*) or can also be referred to as a *Single Member Company (SMC)*. In *Burgelijk Wetboek Boek 2*, it is not clearly mentioned, but the legal basis of this individual company can be seen from the contents of Article 5 letter (b) of the Dutch Business Registration Act which reads *"een onderneming die in Nederland gevestigd is n die toebenhoort aan een natuurkijk persoon"*[19] which requires individual companies in the Netherlands to be registered. *Eenmanszaak* is described as a *legal structure without legal personality*, clearly stating that the establishment and ownership of a sole proprietorship is the responsibility of one individual. A sole proprietorship is a formal company that not a legal entity, so the ownership of a sole proprietorship in the Netherlands has unlimited liability for the company. All profits and losses such as debts that may result from the company's business activities are the full responsibility of the owner, so that there are no personal wealth assets separated from the company's capital."[20] Therefore it can be said that the bankruptcy of the business is also a direct bankruptcy of the owner's person."[21]

Sole Propietorship in the Netherlands does not have specific qualifications such as whether or not it can only be established for Micro and Small Enterprises *(Kleineondernemersregeling / KOR)*, but if the company registers KOR will get the convenience of not being obliged to charge value added tax (VAT) to the products offered. In order to establish a sole proprietorship company in the Netherlands, it is necessary to apply for registration at the Dutch Chamber of Commerce *(Kamer von Koophandel /* KvK) to be registered in the Dutch Business Register *(Handelsregister)* by paying a registration fee of €75 Euros. One of the other advantages of a sole proprietorship company is that there is no minimum authorized capital that must be held as a condition of incorporation. *Eenmanszaak* can be established not only by Dutch citizens, but also all citizens of the *European Economic Community (EEC)* and Swiss nationals. This does not rule out foreign nationals outside of the three regions mentioned above who wish to establish a sole proprietorship company, provided they have a residence permit in the Netherlands. After registration, the files will be forwarded by the Dutch Chamber of Commerce to the Dutch Department of Taxation and Customs *(Belastingdienst)* to be followed up by assessing and determining the founder of the individual company as an entrepreneur who is classified as an object of Value Added Tax (VAT), which in Dutch is called *Belasting over de Toegevoegde Waarde* (BTW).

In general, individual companies are included in the obligation to pay which is included as a category of Income Tax (PPh) which in Dutch is referred to as *Inkomstenbelasting* based on Article 1.1 of the Dutch Income Tax Act *(Wet-Inkomstenbelasting 2001)*[22] which states explicitly by reading *"Onder de naam inkomstenbelasting wordt een belasting geheven van natuurlijke personen",* meaning that Income Tax is only imposed on individuals. The law that serves as the legal basis for tax imposition further emphasizes the position of *Eenmanszaak* as a corporate entity that is not separate from its owner. The amount of tax to be charged to taxpayers is categorized based on their income. The categories of basic tax provisions based on this income can be divided into three, namely: Category 1 - *belastbare inkomen uit werk en woning;* Category 2 - *belastbar inkomen uit aanmerkelijk belang;* and Category 3 - *belastbare inkomen uit sparen en beleggen; Eenmanszaak* entities are classified Category 1 - Taxable Labor and Home Ownership *(belastbare inkomen uit werk en woning)*. From the categorization of the nominal income tax to be paid, it shows that the Dutch government pays more attention to the continuity of the running of individual companies by providing a flexible tax burden based on the total amount of income minus several items of expenditure.

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Table 1. Income Tax Percentage Based on Wet-Inkomstenbelasting 2001

Calculation of the Percentage of Income Taxable from the Total Income *of Eenmanszaak*			
Taxable income and home ownership if more than:	If not more than:	The basic tax payable is the amount specified in column III, plus the amount calculated by taking the portion of taxable income from which the amount specified in column I exceeds minus the percentage stated in column IV.	
I	II	III	IV (Tax percentage)
-	€ 19.645	-	5,85%
€ 19.645	€ 33.363	€ 1.149	10,85%
€ 33.363	€ 55.991	€ 2.637	42%
€ 55.991	-	€ 12.140	52%

Although *Eenmanszaak* is a sole proprietorship company established and run by one person, is also allowed to empower employees who work to carry out the company's business activities, this does not change the essence of sole proprietorship company. So that a sole proprietorship company is only owned and run by one person, and if there are people working in the company, it is only limited to being an assistant to the entrepreneur in the company based on a work agreement and grant of power of attorney.[11] And considering that *Eenmanszaak* is a business entity attached to its owner, this sole proprietorship company has no time limit for establishment and will remain until it is dissolved or when the owner has passed .

3.3 Comparison of *Sole Proprietroship* between Indonesia and the Netherlands

Sole Proprietorship is a form of business entity that has been recognized in many countries.[14] One of the two countries that already have this form of individual company is Indonesia and the Netherlands which have a long history of legal formation, especially after the issuance of Perpu Number 2 of 2022 in Indonesia. It is interesting to compare the two forms of sole proprietorship two different countries using the variables of business entity form, registration, taxation, and capitalization for Sole Propriatroship. The following are the similarities and differences of *Sole Proprietorship* between Indonesia and the Netherlands:

Table 2. Comparison of *Sole Proprietorship* between Indonesia and the Netherlands

Country	**Indonesia**	**Netherlands**
Overview	Company incorporated legal Limited Liability Company (PT) which can be established as well as run by one person with a minimum wage qualification.	A company that is established and run by one person and is not a legal entity.
Legal Basis	Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation; Law No. 40 of 2007 on Limited Liability Companies (UU PT); PP No. 08/2021 on the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that meet the criteria for MSEs;	Burgerlijk Wetboek - Boek 2: Civil, Commercial and Family Law of the Kingdom of the Netherland; Handelsregisterwet 2007 (Commercial Registry Act 2007); Wet-Inkomstenbelasting 2001 (Income Tax Act 2001);
Company Form	*Sole Proprietroship* in Indonesia takes the form of a Limited Liability Company (PT) which can be established by one person.	*Sole Proprietorship* in the Netherlands takes the form of a *sole proprietorship* in which the corporate entity and the owner are not separate.
Advantages	Easy enrollment; Legal entity with limited liability principle; Without require ratification	Easy and low-cost enrollment; Without the need to have a capital base; Low and flexible taxes;

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	other parties; Low taxes;	It has no time limit;
Disadvantages	Has a time period; Have an authorized capital with MSE criteria;	Not a legal entity; Unlimited responsibility; Limited capital and less ability to access extensive bank funding;

4 Conclusion

Based on the research that has been conducted by the author, there are several conclusions that the author gets. Government Regulation in Lieu of Law (Perpu) No. 2 of 2022 concerning Job Creation is the legal basis for the existence of two forms of Limited Liability Companies present in the world of Indonesian business law, namely PT Persekutuan Modal which is based on an agreement and PT Perseorangan which is a new form of legal entity in Indonesia that can be established by one individual. Meanwhile, the legal basis for the existence of *Eenmanszaak* in the Netherlands is Handelsregisterwet 2007 *(Commercial Registry Act 2007)*. From the form of business entity, *Sole Proprietorship* in the Netherlands is a business entity that does not take the form of a legal entity and is not a separate entity from its owner. It is different from *Sole Proprietorship* in Indonesia, which is a business entity in the form of a legal entity and separate from the owner. And seen from the sector taxation imposed on *Sole Proprietorship* in Indonesia and the Netherlands is Income Tax (PPH). The value of PPH for Sole Proprietorship in Indonesia is 0.5%, while the amount of tax charged to Eenmanszaak is adjusted to the categories listed in the Wet- Inkomstenbelasting 2001 *(Income Tax Act 2001).*

This research certainly cannot run without the help and cooperation of many parties. Both those who provide assistance in the form of moral and material assistance that has participated in the success of the research that has been carried out so that it can achieve the objectives of conducting this research with good and in-depth results. The researcher expresses his deepest gratitude to those who have participated.

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