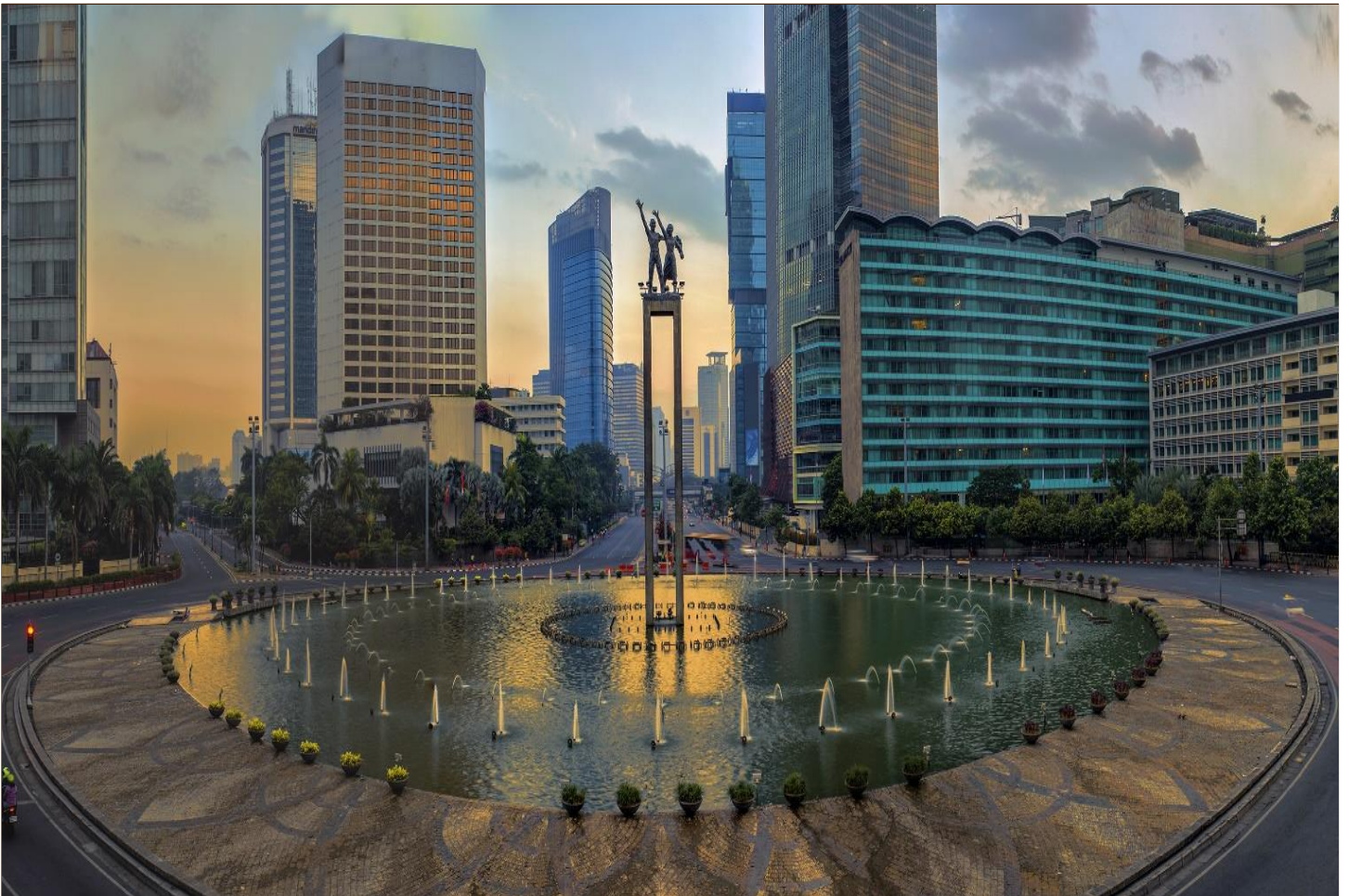




BAGUS ENRICO & PARTNERS
COUNSELLORS AT LAW



OMNIBUS LAW SERIES

CHAPTER IV: COMPANY LAW



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Omnibus Series: Company Law

With the enactment of the Omnibus Law and recent issuance of numerous implementing regulations has effectively changed the regulations of various sectors, including Law No. 40 of 2007 concerning Limited Liability Companies (“**Company Law**”). The Omnibus Law has made notable amendments related to Limited Liability Companies (*Perseroan Terbatas* or “**PT**”) and Small and Micro Enterprises (*Usaha Mikro, Kecil dan Menengah* or “**UMKM**”). Further changes regarding UMKM have been incorporated through implementing regulations such as Government Regulation No. 8 of 2021 concerning Authorized Capital, Establishment, Registration, Changes, and Dissolution of Companies that meet the Criteria for Micro and Small Enterprises (“**GR 8/2021**”) and Ministry of Law and Human Rights Regulation No. 21 of 2021 concerning the Requirements and Procedure on Establishment Registration, Amendment, Dissolution Limited Liability Companies Legal Entity (“**MOLHR Regulation 21/2021**”). The following are key points of the amended Company Law.

Authorized Capital of PTs

Another significant change set forth under the Omnibus Law is the provision regarding the authorized capital of a PT. Previously, under the Company Law, a minimum amount of authorized capital for a PT is IDR 50,000,000 (fifty million Rupiah). However, the Omnibus Law has changed this requirement such that the amount required will be based on the sole discretion of the business owner to determine depending on the type of business activity they are to engage in. This regulation applies to both PTs and sole proprietorships with limited liability.



Costs Charged to PTs

The enactment of the Omnibus Law also affects the costs charged to PTs. The Company Law used to stipulate how certain actions done by PTs could and would incur costs. These actions include obtaining the PT’s name, obtaining Minister of Law and Human Right’s (“**MoLHR**”) approval on the establishment on such PT as a legal entity, or obtaining MoLHR’s approval on amendment of the article of association of the PT, etc. The costs listed under the Company Law were later removed and replaced by other costs based on Government Regulations No. 28 of 2019 on Types and Tariffs on Non-Tax State Revenue (“**GR 28/2019**”), in conjunction with Law No. 9 of 2018 concerning Non-Tax State Revenue. Although the Omnibus Law does amend the costs to PTs as mentioned in the Company Law, such amendment is only meant to adjust the costs charged for limited liability companies to those costs replaced by GR 28/2019.

Founders of PTs

Previously, the Company Law indicated that the only parties allowed to be sole founders of a PT are limited to the following:

- (i) *Persero* or State-Owned Enterprises where all of its shares are owned by the Government; and

- (ii) Company engaged in the management of stock exchange, clearing and securities institutions, depository and settlement institutions, and other institutions in accordance with Capital Market Law.

The enactment of the Omnibus Law has added a few additional parties that can now fall under this category of sole founder of a PT. These includes as follows:

- (i) Regional Owned Enterprises;
- (ii) Village Owned Enterprises; and
- (iii) PTs that satisfy conditions for UMKM who wish to establish their businesses as a sole proprietorship with the benefit of limited liability (discussed below)

Sole Proprietorship with Limited Liability

The Omnibus Law introduces a new classification of a PT, namely sole proprietorship with limited liability. This new classification is applied to accommodate the rapid growth of UMKM businesses in Indonesia, motivated by the Indonesian Government's intention to ease the risks associated with liability. As a result, UMKM business owners will be able to have limited liability separate from their own personal liability and the easing of some of the requirements and obligations compared to regular PTs.

In an effort to incorporate the regulation on sole proprietorship with limited liability to the Company Law, certain provisions on corporate secretarial



matters have been supplemented. It broadly outlines that this type of legal entity can be established by one person or an individual (who is a natural person and not a legal entity), which will act as both the sole shareholder and the director of the company. Establishing such a business will require a Statement of Establishment (*Pernyataan Pendirian*), which does not need to be in the form of a notarial deed but must be registered to the MoLHR electronic system. The authorized capital required for setting up a sole proprietorship with limited liability shall be determined by the founder, by taking into account the applicable laws and regulations for the engaged business activities.

The Omnibus Law has made notable amendments related to Limited Liability Companies (Perseroan Terbatas or "PT") and Small and Micro Enterprises (Usaha Mikro, Kecil dan Menengah or "UMKM")

Lastly, sole proprietorship with limited liability can only be liquidated with prior to approval of the sole proprietorship with limited liability's General Meeting of Shareholders or if the following circumstances occur:

- a) expiration of sole proprietorship with limited liability's terms;
- b) if a Court's judgement has ordered the liquidation of the sole proprietorship with limited liability;
- c) revocation of sole proprietorship with limited liability's bankruptcy based on a commercial court's judgement that has been in full force and effect, where the sole proprietorship with limited liability does not have enough assets to repay all of its debts;
- d) where the assets of the sole proprietorship with limited liability, that has been declared bankrupt, and so is insolvent;

- e) revocation of sole proprietorship with limited liability's business license, where the sole proprietorship with limited liability is obliged to liquidate itself.

It is also within the Government's interest to ease the process of establishing and operating sole proprietorship with limited liability, thus certain incentives have been provided to encourage and support this newly introduced classification of PT. Examples can be taken from the relaxation of certain rules such as the removal of obligation for corporate deeds to be in notarial form and the lowering of costs for these businesses' establishment with simplified establishment procedure.

However, please note that in the event that sole proprietorship with limited liability no longer satisfies the criteria as a sole proprietorship with limited liability, it will have to escalate its status into a regular PT. Further provisions and a more detailed technical procedure are regulated under GR 8/2021 and MoLHR Regulation 21/2021.

Should there be any queries related to how this specific regulation may affect your business or personal interests please do not hesitate to contact us.

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