

THE IMPLEMENTATION OF 10TH ECONOMIC POLICY PACKAGE RELATED SMALL MEDIUM ENTERPRISES ESTABLISHMENT IN INDONESIA

IMPLEMENTASI PAKET KEBIJAKAN JILID KESEPULUH TERKAIT PENDIRIAN PERUSAHAAN KECIL MENENGAH DI INDONESIA

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Abstract

Small Medium Enterprises company is one of the most popular business entities today. The popularity is cannot be separated from the spirit of entrepreneurship with young creative mindset that become mainstream in daily life. In relevancy with that, The Government of Republic Indonesia enacted Government Regulation No 29 Year 2016 to simplify the establishment process of Small Medium Enterprises legal entity. In practice area, the enactment of that regulation cannot be implemented well because there are some miss connections in regulations structure of Indonesia. In order to solve the problem, this research uses the normative research methodology that possible to answer by describing and explaining the facts with the applied regulation. The theory of limited liability company based on Indonesian Law such as Law No 40 Year 2007 was also applied in this research as a tool to analyse and solve the problem related that issue.

Keywords: small medium enterprises (SMEs), limited liability company, company law, regulation, company establishment

JEL Classification: K20, K29, K49

Abstrak

Perusahaan Kecil Menengah merupakan salah satu entitas bisnis yang paling populer saat ini. Kepopulerannya tidak dapat dipisahkan dari semangat kewirausahaan dengan pola pikir kreatif muda yang menjadi arus utama di dalam kehidupan sehari-hari. Sehubungan dengan itu, Pemerintah Republik Indonesia memberlakukan Peraturan Pemerintah Nomor 29 Tahun 2017 guna menyederhanakan proses pendirian entitas hukum untuk usaha kecil menengah. Pada praktiknya, pemberlakuan peraturan tersebut tidak dapat diimplementasikan dengan baik karena adanya beberapa ketidaksinambungan dalam struktur peraturan perundang-undangan di Indonesia. Untuk mengatasi permasalahan tersebut, penelitian ini menggunakan metode penelitian normatif yang memungkinkan untuk menjawab dengan menggambarkan dan menjelaskan fakta-fakta dengan peraturan perundang-undangan yang berlaku. Teori mengenai Perseroan Terbatas berdasarkan Perundangan Indonesia, seperti Undang-Undang Nomor 40 Tahun 2007 juga digunakan dalam penelitian ini sebagai alat untuk menganalisis dan menyelesaikan permasalahan terkait dengan isu tersebut.

Kata kunci: usaha kecil menengah (UKM), perseroan terbatas, undang-undang perseroan, pendirian perusahaan

Klasifikasi JEL: K20, K29, K49

BACKGROUND

In order to accelerate the process of economic development, The Government of Republic Indonesia has taken some strategies to catch either domestic or foreign investor to invest their shares in Indonesia by making policies that gives an ease

for those who want to invest their capital. The strategies were related especially with numbers of regulations which burden the entrepreneur and investors, resulting the fall of Indonesia's competitiveness (the Change of Limited Liability Company Capital, 2016a).

Starting from President Joko Widodo policy in supporting Small Medium Enterprises (“SME”), his government has issued the 10th Economic Policy Package on 11 February 2016. Through the 10th Economic Policy Package, the government tried to make various breakthroughs to boost the economic condition due to the reduction of commodity prices and weakening global economy. The main idea of 10th Economic Policy Package is to facilitate an investment by increasing a protection for SMEs.

The rise of investment that is regulated in this economic policy package supposed to support domestic and foreign investment as well as spurring the economic growth that stable and sustainable. It is also expected to push Indonesia to adjust the position in order to become production based and central logistic in utilizing the opportunity of market segment (The President Staff Office, 2016). Besides that, the government also did a revision on Negative List of Foreign Investment that is regulated in President Decree No. 44 Year 2016 Concerning List of Business Fields that are closed to investment and business field that are conditionally opened for investment with the requirement in capital investment. By revising the President Decree, the government added nineteen business fields that backed up the SMEs as well as cooperative (Ministry of Finance, 2016). The 10th Economic Policy Package is also expected to cut an economic central that is enjoyed by specific group and creates a low price for medicine and health equipment. Furthermore, this policy is created to anticipate the competition in ASEAN Economic Community era.

In Indonesia, business entities play a central role as the business institution which run the business filed. By considering the form of business entity that used in certain business field, the stakeholders can easily determine the liability and responsibility of the business institution. The SME sector that supported by The Government of Indonesia also needs the existence of legal entity to run the business legally. In Indonesia, there are several forms of business entities such as sole proprietorship, civil partnerships, limited partnership, firms, limited liability companies, foundations, cooperation and others that basically have different characteristics and legal aspects,

but not all of them are considered as a legal entity (Sembiring, 2013). Limited Liability Company is considered as the most common business entity and legal entity which used for business activities in Indonesia. It has chosen by the entrepreneur as their business entity and legal entity because there is separation of asset principle inside that cause the asset of the founder will be always different with the asset of the business institution. By considering that aspect, the entrepreneur will feel safe especially against the possibility of bankrupt situation.

As together business and legal entity, principally Limited Liability Company is a legal entity constituting capital partnership, established based on an agreement, conducting business activities with all of its authorized capital being divided into shares and meet the requirements stipulated in company law and its implementing regulations (Limited Liability Company, 2007). Limited Liability Company in Indonesia is regulated under Law No. 40 Year 2007.

On the other hand, in the implementation of Law No. 40 Year 2007, there is a substance that quite hard to be implemented and complicate to the business itself, especially for entrepreneur that wants to start their business. Coming up with the background above, it is indeed to do an adjustment with the development of society needs. The adjustment itself has a purpose to facilitate an entrepreneur in terms of starting their business and ensuring the orderliness of business sector in terms of investment by changing the amount of authorized capital that burdens the entrepreneur that just wants to start their business. It cannot be denied that in order to start a business, the legal elements related to the business enterprise are required. Limited Liability Company is required to have sufficient amount of authorized capital in starting the business activity. Authorized capital of Limited Liability Company must be stated on articles of association as stated in Limited Liability Company as well as deed of establishment. As stated in article 32 section 1 Law No. 40 Year 2007, the authorized capital of the Limited Liability Company shall consist of the total nominal value of all shares. It shall not preclude the laws and regulations on capital markets from stipulating that the capital of a

company shall consist of shares without nominal value. Authorized capital of a company shall be no less than IDR 50.000.000,00. To improve the ease of doing business and for the purpose of acceleration of the national development and also considering the growth of start-up business, the Government of the Republic of Indonesia has promulgated the Government Regulation No. 7 Year 2016 regarding the Change to Authorized Capital of Limited Liability Companies as the part of Economy Policies Package which is effective on March 21st, 2016. This new regulation constitutes the implementing regulation as referred to in Article 32 section 3 of Law No. 40 Year 2007 regarding Limited Liability Companies which stipulates that the amount of authorized capital of limited liability companies as intended in Article 32 section 1 of Company Law may be amended based on a government regulation in order to adjust with changes in economic conditions.

Five months later after the enactment of Government Regulation No. 7 Year 2016, in July 2016 to be exact, government established the new Government Regulation No. 29 Year 2016 that actually concerns in the same provision which is the changes towards authorized capital provision of Limited Liability Company. The Government Regulation itself regulates about the changes of authorized capital provision. By the establishment of Government Regulation No. 29 Year 2016, the total amount of authorized capital is become the consent/agreement of party who wants to set up Limited Liability Company. The change of amount of authorized capital provision that based on the party consent/agreement is one of the government ways to respect the freedom of contract principle that gives a huge freedom for those who want to make an agreement in terms of Limited Liability Company Establishment that based on civil law provision. The Government policies that give a freedom to determine the amount of authorized capital is not only facilitate the entrepreneur in terms of starting their business, but also increase the investment that will push the growth of SMEs. However, in its implementation of Government Regulation No. 29 Year 2016 that actually expected to give an ease to the entrepreneur to start their business

and also increases the investment itself cannot be interpreted easily like written in the regulation.

After the enactment of Government Regulation, Number 29 Year 2016, there is uncertainty condition regarding the establishment of Limited Liability Company which only has limited capital. The application of such Limited Liability Company will be refused by the public notary as the civil servant who entitled to arrange the establishment of Limited Liability Company in Indonesia. They cannot accept the application, because the system of legal entity registration still has not acknowledge regarding new amount of authorized capital. They still use current minimum authorized capital which is IDR 50,000,000.00 to be registered as the capital. According to the explanation abovementioned, in this article the explanation regarding the 10th Economic Policy Package is limited for answering this question: How is the implementation of 10th Economic Policy Package especially related Small Medium Enterprises establishment based on Government Decree No 29 Year 2016 concerning the Change of Limited Liability Company capital?

LITERATURE REVIEW

Theoretical Approach related Limited Liability Company in Indonesia

According to article 1 section 1 Law No. 40 Year 2007, Limited Liability Company is a legal entity constituting a capital partnership, established based on an agreement, conducting business activities with all of its authorized capital being divided into shares and meeting the requirements stipulated in company law and its implementing regulations (Limited Liability Company, 2007). The definition such as mentioned in Article 1 Law No 40 Year 2007 theoretically brings limited liability company into some elements. The elements of limited liability company are consisted of “legal entity”, “agreement” or “contract”, “doing an activity in economic field”, “consisted of authorized capital”, and “obeying the company law” (Limited Liability Company, 2007).

Limited Liability Company is kind of legal entity that being established for running a company with certain capital and divided into shares when the shareholder is participating in taking one share or more and doing a legal action under collective name without personal responsibilities towards those approval (Permana, 1952).

Limited Liability Company considered as a legal subject that has authority to become rights and obligation holder as well as an owner from specific goods and assets. Limited Liability Company is legal entity as a form of artificial person which was created by laws to fulfil the needs of society development. It can be seen from article 519 Indonesian Civil Code which stated 'There are exist properties which do not belong to anybody, all other properties are the property of the State, communities, or specific individuals.

As a legal creature, Limited Liability Company characterized as an artificial creature. A Limited Liability Company as an artificial creature definitely cannot perform an activity because of its form which is not real (Solomon & Palmiter, 1994). Thus, in order to do a legal action and achieve the purpose, it is needed an organ to running the activities. According to Law No. 40 Year 2007, organs of Limited Liability Company are general meeting shareholder, board of directors, and board of commissioner (Irwadi, 2003).

General meeting shareholder hereinafter referred to as the "GMS", is a company organ holding the authority not conferred upon the board of directors "BOD" or board of commissioners "BOC" within the limits determined under the law or articles of associations. Shareholders are entitled to obtain information related to the company from the "BOD" or the "BOC" in so far as it is connected to the agenda of the GMS and does not conflict with the Company's interest. Other meeting agenda is not allowed to be approved by GMS, unless all of the shareholders who are present or represented approving the additional of the meeting agenda.

GMS shall be held in the Company's domicile or in the place where the company does its main business as specified in the article of association. The GMS of listed companies shall be held in the domicile of the stock exchange where

the company's shares are listed. The place where GMS will be held must be located in the territory of the Republic of Indonesia. GMS may also be held by teleconference, video conference, or other instruments for electronic media which makes it possible for all of the participants in the GMS to directly see and hear each other and to participate in the meeting. Any GMS held by teleconference, video conference, or other instruments for electronic media must have minutes of meeting which are approved and signed by all of the GMS' participants.

GMS consists of annual GMS and another GMS. Annual GMS shall be held within the period of not more than 6 (six) months after the financial year ends. In the Annual GMS, all of the company's documents and annual report must be submitted. Other GMS may be hold at any time based on Company's interest. BOD is the company organ that is fully responsible and has an authority to manage the company in terms of company interest and in accordance with its purpose and objective as well as represent the company also to represent the company both within and outside the courts of law that based on the provision on its articles of association.

The ability of the BOD to represent the Company is not limited and not conditional, unless otherwise stipulated in the Company Law, articles of association or resolutions by the General Meeting of Shareholders. If the BOD comprises more than 1 (one) person, each individual member may represent the Company, unless otherwise stipulated in the articles of association. The purpose of this exception is that the articles of association may determine that the Company can only be represented by a certain member of the board of directors as stipulated in Article 98 of the Company Law. Under Article 99 of the Law No. 40 Year 2007, the authority of the board of directors in representing the Company is unlimited.

A limited liability company ("Company") must be established by 2 (two) or more persons through a notarial deed made in the Indonesian language. This is provision goes to Article 7 Law No. 40/2007. In other words, a Company must be established pursuant to a contract, and therefore it must have more than 1 (one) shareholder.

However, there are some exemptions of the aforementioned provision regarding the obligation of a Company that should be established by 2 (two) or more persons (founders). Those provision does not apply to state-owned company, all of whose shares are owned by the state, or a company managing stock exchanges, clearing and guarantee houses, central securities depositories, and other institutions regulated in the capital market law.

There are some requirements that are required in establishing a company, such as providing information related to the company before obtaining its status as a legal entity, such as the name, domicile, the period of incorporation and other information related to a company. The said information related to a company must be contained in the deed of establishment.

In establishing a company, it is also important for a company to obtain the status of a legal entity given by Minister of Justice and Human Rights, in which that a Company shall obtain the status of a legal entity on the date of issuance the Decree of the Ministerial Decree regarding Limited Liability incorporation. In order to obtain the Ministerial Decree, the founders of a company's incorporation shall collectively submit a request through electronic legal entity administration information technology system services to the Minister by completing a form that at least contains name and domicile of the company, duration of the company, purposes, objectives and business activities of the company along with amount of authorized, issued and paid up capital.

In the Limited Liability Company, capital is the primary factor which allows the company to conduct their business activities. The Law number 40 of 2007 on Limited Liability Company has set out the provision on the company capital. Company Law stipulates that the capital in the company can have three differentiations. Firstly, authorized capital, means the total amount of shares that a company is allowed to issue to the shareholders. The authorized capital can be called as the registered capital because this capital shall be included in the deed of establishment when the company is established. Secondly, issued capital means the capital that is issued by the company to the shareholders. Lastly, paid-up capital means the capital obtained from the shareholders.

According to Article 32 of Company Law, the minimum authorized capital for a company is IDR 50.000.000, 00. Moreover, with regards to the issued and paid up capital, the minimum portion for those capitals are 25% for each capital which will be calculated from the authorized capital and shall be paid up in full by the shareholders. as the evidence for the issued and paid up capital, according to Article 33 of Company Law, it is stated that those capital shall be proven by lawful evidence of deposit.

METHODS

This article uses legal research methodology as the way to answer the research question as mentioned above. According to Yaqin (2007) one of the objective of legal research is to ascertain the nature, purpose and policy-objectives of legal rules and principles that govern a specific situation and determine their current relevance, utility, adequacy or efficacy such as laws enacted for the benefit of frames or fishermen, or those designed to protect children from abuse, or those seeking to minimise environmental pollution, or principles of international law aimed at recognising and protecting certain rights for refugees. This research tries to ascertain the implementation of Government Regulation No 29 Year 2016 related the establishment of limited liability company.

In line with the objective of this research, statute approach is used by the researcher to see the implementation of certain regulation applied in society (Ibrahim, 2007). Government Regulation No 29 Year 2016 is reviewed as primary legal resource in this research. This method is supposed to use a statue approach, due this article research will use positive law and regulation approach as their main sources (Mamudji, 2005). It emphasizes the use of written legal norm and supported by data which taken directly from public notary as legal practitioner. In line with the type of legal research methodology, this article categorized as descriptive analytic since the writing of this research will present the theory, structure, substance and procedure to set up Limited Liability Company including its implementation as well as its compliance with regulation in Indonesia that can become a reference to settle the legal issues that will

happen in terms of Limited Liability Company Establishment based on Government Regulation No. 29 Year 2016 (Mamudji, 2005).

RESULTS AND DISCUSSION

Limited Liability Company according to Indonesian Law

In general, business entities can be divided into two types which are business entities not in the form of legal entity and business entities in the form of legal entity. In the form of legal entity, it's recognizes the separation of the assets of the founder and established entity while a business entity does not.

Establishing business entities in the form of legal entity requires the approval of several government institutions while establishing a business entity only requires registration with government. In the form of legal entities, the responsibility of each party is limited based on their shares conversely with business entities not in the form of legal entity, they have such a huge personal responsibility.

In Indonesia, there are several types of business entities such as sole proprietorship, civil partnerships, limited partnership, firms, limited liability companies, foundations, cooperation and others that basically have different characteristics and legal elements. Actually, not all of them are considered as a legal entity (Sembiring, 2013).

One of the legal entities practiced in Indonesia business, Limited Liability Company, is considered as the most trusted in the area of business activities. Limited Liability Company is a legal entity constituting a capital partnership, established based on an agreement, conducting business activities with all of its authorized capital being divided into shares and meet the requirements stipulated in company law and its implementing regulations (Limited Liability Company, 2007).

Limited Liability Company in Indonesia is regulated under Law No. 40 year 2007. Before Law No. 40 year 2007, the previous law that regulates Limited Liability Company is Law No. 1 year 1995. Limited Liability Company has their own characteristic that makes the entrepreneurs preferring to establish their business entities in

the form of Limited Liability Company, such as (i) there is a separation between personal and company property in this business form, so if one day the Limited Liability Company is bankrupt then personal property will be safe; (ii) shareholders' ownership of interests are easily transferable; and (iii) there is a limited liability (Sardjono, Dewi, Irawaty, & Pangaribuan, 2016).

In practice, the arrangement of Limited Liability Company in Indonesia has already existed since Dutch Colony with the name of "*Naamloze Vennootschap*". About *Naamloze Vennootschap* itself, it has regulated in Commercial Code especially in Book 1 and Chapter III about Limited Liability Company from article 36 until 56 and it's applicable until 1995. In 1995, Government were established the Law No. 1 Year 1995 that concerning about Limited Liability Company, but it's applicable until 2007.

The changes of Law No. 1 Year 1995 caused by the provisions contained in Law No. 1 Year 1995 are deemed to be unable in fulfilling the needs of community and the development in law which becomes economic and scientific conditions as well as technological and information developments and have progress rapidly and particularly in globalization era.

Law No. 40 Year 2007 added some provisions including the type of Limited Liability Company itself, such as publicly listed limited liability company, public company, and closed limited liability company (Sardjono, Dewi, Irawaty, & Pangaribuan, 2016). Publicly listed limited liability company is a public company that conducting public offering of shares in accordance with the provisions of the laws and regulations governing capital markets. Public company is a company fulfilling the criteria on the number of shareholders and amount of paid up capital, in accordance with the provisions of the laws and regulations governing capital markets. Closed limited liability company is a kind of company when not all the person could participate along with their capital by giving one or more shares. One characteristic that consider a company as Closed Limited Liability Company is a letter of shares published under Company's name.

As a legal creature, Limited Liability Company characterized as an artificial creature.

A Limited Liability Company as an artificial creature definitely cannot perform an activity because of its form which is not real (Solomon & Palmiter, 1994). Thus, in order to do a legal action and achieve the purpose, it's needed an organ to running the activities. According to Law No. 40 Year 2007, organs of limited liability company are general meeting shareholder, board of directors, and board of commissioner.

General meeting shareholder hereinafter referred to as the "GMS", is a company organ holding the authority not conferred upon the board of directors "BOD" or board of commissioners "BOC" within the limits determined under the law or articles of associations. Shareholders are entitled to obtain information related to the company from the BOD or the BOC in so far as it is connected to the agenda of the GMS and does not conflict with the Company's interest (Limited Liability Company, 2007).

BOD is the company organ that is fully responsible and has an authority to manage the company in terms of company interest and in accordance with its purpose and objective as well as represent the company also to represent the company both within and outside the courts of law that based on the provision on its articles of association. The ability of the board of directors to represent the Company is not limited and not conditional, unless otherwise stipulated in the Law No. 40 Year 2007, articles of association or resolutions by the General Meeting of Shareholders (Limited Liability Company, 2007).

BOC is the company organ in charge of conducting supervision in general and in particular in accordance with the articles of association and providing to the BOD. BOC is liable upon supervisions of the Company as contemplated in Article 108 paragraph (1) of Company law, which is in the matters of conduct of supervision upon management policies, performance of management in general, both concerning Company as well as business of Company, and provides advice to BOD (Limited Liability Company, 2007).

In its establishment, there are several steps to set up a Limited Liability Company. First, the founder has to reserve the Limited Liability Company's name with the Ministry of Law and

Human Rights and commonly handled by a notary. This procedure should be done before obtaining a Ministerial decree for legal entity status. The Limited Liability Company's name must be in the Indonesian language. In terms of choosing the name for Limited Liability Company, there are several regulations towards name selection (Limited Liability Company, 2007). Firstly, the name has legally used by another company or similar in principle to another company. Secondly, the name contrary to public order and/or norms of decency. Thirdly, the name has similarity to or resemblance with the names of state institutions, governmental institutions or international institutions, except with the permission of the institution concerned. Fourthly, the name is inconsistent with the purposes and objectives or the business activities or only indicates the company's purposes and objectives without particular name. Lastly, the name consists of numerals or group numerals, letters or group of letters that do not form a word or means limited liability company, legal entity or civil partnership. Other requirements for the company's name are specifically regulated in Government Regulation No. 43 of 2011 regarding the procedure for the submission and usage of name of a Limited Liability Company.

Second, obtain the approval for the limited liability company's deed establishment that contains articles of association inside the deed. Basically, it will be done by the notary public electronically in Legal Entity Administration System or as known as *Sisminbakum*. The notary will complete the electronic form prescribed by the Ministry of Law and Human Rights with the required information and supporting documents and submits them to the ministry, at the latest, 60 days after the date the deed of establishment containing the articles of association is executed. The articles of association are prepared in notarial deed in the form of Indonesian language. Article 30 of Law No. 40 of 2007 regarding Limited Liability Companies requires the Ministry of Law and Human Rights to announce the deed of establishment of the Limited Liability Company along with the Ministry's approval in the supplement to the state gazette within 14 days of that approval.

Third, obtain a certificate of domicile. Certificate of domicile is a legal proof towards an existence of Company that issued by Government. This Certificate of domicile can be obtained in Sub-District and District. Fourth, obtain a taxpayer registration number and a taxable entrepreneur registration number. Fifth, register the articles of association with the Ministry of Trade. Following the Ministry of Law and Human Rights' approval of the Limited Liability Company's articles of association, the Limited Liability Company must be registered in the company registry at the relevant regional office of the Ministry of Trade within three months of starting business.

Sixth, obtain the company registration certificate will be issued on filing and is valid for five years. The first Ministry of Trade registration is handled by a notary. Last but not least, publish the articles of association in the state gazette. Following the Ministry of Law and Human Rights' approval and Ministry of Trade registration, the articles of association must be submitted to the state printing office for publication in the supplement to the state gazette.

Capital in the Establishment of Small Medium Enterprises Legal Entity in Indonesia

In the establishment processes of Limited Liability Company, capital is the primary factor which allows the Company to conduct their business activities. Capital means an asset that is owned by an investor in the form of money or another form which is non-money, bearing economic value (Capital Investment, 2007). According to article 31 section 1, capital contains of a total nominal value of shares (Limited Liability Company, 2007). In terms of Limited Liability Company, capital can be divided into three types which are authorized capital, issued capital and paid up capital. Basically, there are three types of those capital has their own definition and terms, which are (i) authorized capital means the total amount of shares that a company is allowed to issue to the shareholders. The authorized capital can be called as the registered capital because this capital shall be included in the deed of establishment when the company is established, (ii) issued capital means the capital that has been

agreed by the founders or shareholders to be paid or deposited in the company's cash, and (iii) paid-up capital means the capital that has been entered by the shareholders as repayment of shares that founders taken as capital that placed from the authorized capital of the company (Limited Liability Company, 2007)..

According to the article 32 section 1 Law No. 40 Year 2007, the authorized capital of the Limited Liability Company shall consist of the total nominal value of all shares. It shall not preclude the laws and regulations on capital markets from stipulating that the capital of a company shall consist of shares without nominal value. Authorized capital of a company shall be no less than IDR 50.000.000, 00 (Limited Liability Company, 2007).

Twenty five percent of the authorized capital must be issued and paid up, evidenced by legal proof of the deposit. Legal proof of the deposit must be submitted electronically to the Minister of Law and Human Rights within the period of 60 (sixty) days since the signed date of the deed of establishment (Limited Liability Company, 2007). For Limited Liability Company which conducts particular business activity, then minimum amount of authorized capital shall be in accordance with prevailing laws and regulations.

Authorized capital of Limited Liability Company must be stated on articles of association as stated in deed of Limited Liability Company establishment. Deed of establishment is a deed that made in front of a Notary which contains an information about founder identity that explain the purpose of company establishment and it's obliged to get an approval from Ministry of Law and Human Rights in order to obtain a legal entity status for Limited Liability Company.

As mentioned above, capital contains of a total nominal value of shares. Share is a proof that shareholders have conducted a full deposit of capital in Limited Liability Company. Shares in Company are classified based on similar characteristics, it is called classification of shares. Article 53 paragraph (1) of Law Number 40 of 2007 on Limited Liability Company stated that the Articles of Association specifies more than one class of shares.

According to article 53 paragraph (3) of Law No. 40 Year 2007 stated that every share in the same class gives the holder with the same rights. Basically, shares divided into two types which is common shares and preferred shares. It can be considered as preferred shares, if there is more than one classification of shares, then Articles of Association sets one of them as common shares. On the other hand, it can be considered as common shares if the position of shareholders is the same and nothing to be specialized.

Common shares are shares which have voting rights to adopt resolutions in general meeting of shareholder concerning all matters related to management of company, have rights to receive dividends which are distributed and to receive remaining assets as a result of liquidation meanwhile preferred shares, according to article 53 paragraph (3) can be divided into several types which are (i) shares with or without voting rights, (ii) shares with special rights to nominate members of the board of director and/or the board of commissioner, (iii) shares which after a certain period of time are revocable or exchangeable with another class of shares, (iv) shares granting their holders the-pre emotive right to receive dividends prior to holders of other classes of shares for dividend distributions cumulatively or non-cumulatively, and (v) shares granting their holders the-pre emotive right to receive the company's remaining assets upon liquidation prior to the holders of other classes of shares (Limited Liability Company, 2007).

In 2016, to improve the ease of doing business and for the purpose of acceleration of the national development and also take into account the growth of start-up business, the Government of the Republic of Indonesia has promulgated the Government Regulation No. 7 of 2016 regarding Changes to Authorized Capital of Limited Liability Companies which is effective on March 21st, 2016.

This new government regulation constitutes the implementing regulation as referred to in Article 32 (3) of Law No. 40 of 2007 regarding Limited Liability Companies which stipulates that the amount of authorized capital of limited liability companies as intended in Article 32 (1) of Company Law may be amended based on a

government regulation in order to adjust with changes in economic conditions.

The changes about the amount of authorized capital was supported by Decree of the People's Consultative Assembly No. XVI/MPR/1998 about politic economy in relation with economic democracy that stated the policy of capital investment properly based on economic democracy that involve in the development of small, medium and micro enterprises as well as cooperative (the Change of Limited Liability Company Capital, 2016b). The activity of capital investment has already become a part of national economic implementation and placed as an effort to increase growth and development of national economic.

Besides that, the activity of capital investment in region have an important role which are to increase the society income, absorb the domestic labour, empower the domestic resources, increase a domestic product in regional gross as well as develop the small, medium and micro enterprises.

In relation with background above, it's indeed to do alteration towards the authorized capital of Limited Liability Company that previously determined at least IDR 50.000.000, 00, the total amount of authorized capital according to this government regulation is based on the consent of founders and it's in line with the freedom of contract principle. The government policy that give a freedom to the founder of Limited Liability Company to determine the amount of authorized capital has a purpose to increase the investment that will push the growth of small, medium and micro enterprises.

This government regulation also regulates about the provision for Limited Liability Company that has been established with the authorized capital that based on article 32 section 2 Law No. 40 Year 2007 about Limited Liability Company still can running their business without doing an adjustment for authorized capital. So, government regulation was established to create a legal certainty for national economic development actor especially in starting their business (the Change of Limited Liability Company Capital, 2016b).

Five months later after the enactment of Government Regulation No. 7 Year 2016, in July 2016 to be exact, government established the new

Government Regulation No. 29 Year 2016 that actually concerns in the same provision which is the changes towards authorized capital provision of Limited Liability Company. The Government Regulation itself regulates about the changes of authorized capital provision. By the establishment of Government Regulation No. 29 Year 2016, the total amount of authorized capital depends on the agreement between each founder who wants to set up Limited Liability Company.

The change of numbers of authorized capital provision that based on founder consent is one of the government ways to respect the freedom of contract principle that gives a huge freedom for those who want to make an agreement in terms of Limited Liability Company Establishment that based on civil law provision.

The Government policies that give a freedom to determine the amount of authorized capital, not only facilitate the entrepreneur in terms of starting their business, but also increase the investment that will boost the growth of small, medium and micro enterprises.

However, the Government Regulation No. 7 Year 2016 offered exemptions to the minimum authorized capital requirement if one or more of a new company's founders turned a net profit at least equal to the criteria for the establishment of micro, small, and medium scale business, as stated in Law [No. 20 of 2008](#) on Micro, Small, and Medium-Scale Businesses.

Twenty five percent of the authorized capital must be issued and paid up, evidenced by legal proof of the deposit. Legal proof of the deposit must be submitted electronically to the Minister of Law and Human Rights within the period of 60 (sixty) days since the signed date of the deed of establishment (Limited Liability Company, 2007). For Limited Liability Company which conducts particular business activity, then minimum amount of authorized capital shall be in accordance with prevailing laws and regulations.

In the implementation of Government Regulation No. 29 Year 2016 that actually gives an ease for entrepreneurs to start their business which can't be implemented and interpreted properly based on personal reasoning. It requires someone who has good legal reasoning and becomes the one who hold an important role in the implementation

of this Government Regulation which is a public notary. As well as their function, a public notary is an authorized person who makes an authentic deed and has more authority as referred to the Act or under other laws.

Coming up with the background of Government Regulation No. 29 Year 2016, the purpose of establishing the Government Regulation No. 29 Year 2016 is to support and give an ease for businessmen in order to start their business as well as the increase of investment that will impact the growth of SMEs.

Refers to the article 3 section 1 of Government Regulation No. 29 year 2016, it is stated that Limited Liability Company that runs specific business activities, the minimum authorized capital of Limited Liability Company must fit with the legislation. Law No 20 Year 2008 concerning about small, micro and medium enterprises that have already stated the requirement to set up SMEs.

For micro, it should have a maximum net asset of IDR 50.000.000,00 (fifty million Rupiah), exclusive of land and building of their place of business or having maximum annual sales proceeds of IDR 300.000.000,00 (Micro, Small and Medium Enterprises, 2008). For small enterprises, it should have net assets of more than IDR 50.000.000,00 up to a maximum amount of IDR 500.000.000,00 exclusive land and building of their place of business; or having annual sales proceeds of more than IDR 300.000.000,00 up to a maximum amount of IDR 2.500.000.000,00 (Micro, Small and Medium Enterprises, 2008).

Last but not least, for medium enterprises it should require net assets of more than IDR 500.000.000,00 up to a maximum amount of IDR 10.000.000.000,00 exclusive land and building of their place of business or having maximum annual sales proceeds of more than IDR 2.500.000.000,00 up to a maximum amount of IDR 50.000.000.000,00 (Micro, Small and Medium Enterprises, 2008).

Previously, Government Regulation No. 7 Year 2016 made no changes to the required amount of authorized capital needed to establish a company, as set out under the Company Law, which remains set at IDR 50.000.000,00. On the other hand, in article 1 section 3 in Government

Regulation No. 29 year 2016, it is stated that the authorized capital of Limited Liability Company is determined by the consent of the founders.

Logically, what is written in Government Regulation No. 29 Year 2016 can create an uncertainty on each article if a founder cannot get the real interpretation of each article. For instance, in the article 1 section 3 of Government Regulation No. 29 Year 2016, it is stated that there is no determination about authorized capital for set up a Limited Liability Company and required to Limited Liability Company that runs special activities to adjust the specific legislation.

On the other hand, refers to the requirement in each business scale of SMEs, it is required at least IDR 50.000.000, 00 to establish small enterprises. Indirectly, the provision on the Government Regulation creates an uncertainty which will impact the implementation on its Government Regulation.

The obvious reason of this Government Regulation creates an uncertainty on its implementation because in the Government Regulation No. 29 Year 2016 there is no determination about total amount authorized capital, so it can be more than IDR. 50.000.000,00 or less than IDR 50.000.000,00. How if the founder would like to establish a Limited Liability Company with authorized capital less than IDR 50.000.000,00. Will the public notary proceed their request?

As well as its nature, Law has created a legal certainty. Law and legal certainty are two things that have correlation and cannot be separated. Law without a value will lose its meaning since the purpose of the law itself is to become a guidance for everyone around the law itself. One of main purpose from legal certainty is to give a protection for individual towards others' individual arbitrariness.

A legal certainty is able to describe as an exact norm/regulation towards current law in society. The reason why society needs a legal certainty from one or other regulation because nowadays people could not interpret what actually contain and target of the law itself. In brief, a legal certainty is like a guarantee that law is being implemented and everyone that based on law got their right. A legal certainty is like a brand

who cannot be separated from law especially for written law.

As a result, practically if there is a founder that would like to establish a Limited Liability with authorized capital less than IDR 50.000.000, 00 and holding the Government Regulation No. 29 Year 2016 article 1 section 3 as their main sources, at first the public notary will ask what kind of business that founder would like to run in form of Limited Liability Company. If the founder supposes to runs a business especially in "trading/commercial", the public notary will refer to Regulation of Ministry of Trade of RI No: 46/M-DAG/PER/9/2009 that concerning on Trade Business License (Mukti, 2018).

In establishing a Limited Liability Company, there are several permissions and deed that should be completed by a Limited Liability Company before running their business such as Deed of Establishment that has same contains as Article of Association, Ministerial Decree for legal entity status from Ministry of Law & Human Rights, Certificate of Domicile, Taxpayer registration number and a Taxable entrepreneur registration number, Trade Business License and Company Registration Certificate.

According to Regulation of Ministry of Trade of RI No: 46/M-DAG/PER/9/2009, Trade Business License is a permission letter needed for running a commercial and trading activities as well as the legality of trading company itself (Trade Business License, 2007). Basically, Trade Business License can be categorized in three types which are Small, Medium and Large. It's all needed to all Limited Liability Company that running a commercial and trading as their chosen business (Trade Business License, 2007).

Small Trade Business License is needed for commercial company that has real assets started from IDR 50.000.000,00. Until IDR 500.000.000,00 exclude land and building for commercial activities. Medium Trade Business License is needed for commercial company that has real assets that starts from IDR 500.000.000,00. Until IDR 10.000.000.000,00 exclude land and building for commercial activities. Large Trade Business License is needed for commercial company that has real assets more than IDR. 10.000.000.000,00 (Trade Business License,

2009). For instance, if the founder of trading company chooses SIUP Kecil as their reference, based on Regulation of Ministry of Trade of RI No: 46/M-DAG/PER/9/2009, it is required at least IDR 50.000.000,00 for real asset exclude from building, land and another asset.

In brief, the public notary will refuse the request of Limited Liability Company deed of process establishment if there is a founder that would like to establish a Limited Liability Company that has an authorized capital less than IDR 50.000.000, 00 because those Government Regulation No. 29 Year 2016 is not synchronized with the derived regulation under the Government Regulation No. 29 Year 2016 and Law No. 40 Year 2007.

The statement above is also strengthened by a discussion with PTSP or as known as One Stop Integrated Service. This public service is established in order to give an ease in terms of permission or non-permission. As result of discussion with PTSP staff that concern with Trade Business License, they will refuse the application for Small Trade Business License if the real assets or authorized capital under IDR 50.000.000, 00. From all the result from discussion above, it can be concluded that the Government Regulation No. 29 Year 2016 is not well implemented and against article 32 section 1 Law No. 40 Year 2007.

The obvious reason why the Government Regulation No. 29 Year 2016 consider against Law No. 40 Year 2007, because the provision in article 32 section 1 Law No. 40 Year 2007 is not withdrawn by the government. Refers to article 7 section (1) Law No. 12 Year 2011 focusing on the establishment of laws and regulations, the hierarchy of legislation are RI Constitution of 1945, People's Consultative Council Decree, Law/Government Regulation In Lieu of Law, Government Regulation, Presidential Regulation, Province Regulation, and Regency/Municipality Regulation (Establishment of Laws and Regulation, 2011).

According to article 1 section 7 Law No. 12 Year 2011, Government Regulation is a set of regulation that is enacted by President to implement the Law as it supposed to be and it's contains a content to implement the Law over

the Government Regulation itself. As well as its nature, the provision in Government Regulation is not supposed to against the Law and it should implement the provision over the Government Regulation itself. Another theory that strengthen the arguments above is *Lex Superior Derogat Legi Inferior* Principle. It means that the highest regulation set aside a regulation under them.

Moreover, there is no determination like what was written in Government Regulation No. 7 year 2016, even they give a freedom to a founder to determine their own authorized capital but at first article of those Government Regulation required IDR. 50.000.000,00 for authorized capital. Logically, if a founder would like to set up a Limited Liability Company, the authorized capital at least is same as the article 1 section 1 of Government Regulation No. 7 year 2016 or more than IDR 50.000.000,00.

CONCLUSION

Lex Superior Derogat Legi Inferior is the principle that has to be followed by all of the stakeholder especially related to the establishment of limited liability company. It means that the highest regulation set aside a provision under the highest regulation. Moreover, there is no determination like what was written in Government Regulation No. 7 year 2016, even they give a freedom to a founder to determine their own authorized capital but at first article of those Government Regulation required IDR. 50.000.000,00 for authorized capital. Logically, if a founder would like to set up a Limited Liability Company, the authorized capital at least is same as the article 1 section 1 of Government Regulation No. 7 year 2016 or more than IDR 50.000.000,00.

Furthermore, the provision in article 2 section 2 Government Regulation No. 29 Year 2016 is well implemented on its implementation. All the permission that is needed for open a bank account for Limited Liability Company takes under sixty days on its working process. So, the founder can submit the payment receipt of authorized capital to the Ministry of Law and Human Rights immediately and it will not take until sixty days as its required in the provision in article 2 section 2 Government Regulation No. 29 Year 2016

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