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Limited Liability without Corporate Organs: Creditor Protection in Indonesia's Single-Member Company

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ABSTRACT

This study examined creditor protection in the individual company (perseroan perorangan), the single-member limited liability company introduced into Indonesian company law by the Job Creation Law. The problem addressed was that the classical justification for limited liability rests on structural preconditions, namely asset separation, capital adequacy, internal monitoring, and disclosure, whereas the individual company retains limited liability while the founder is simultaneously sole shareholder and sole director. The research applied a normative legal method combining statutory, conceptual, and comparative approaches, examining Indonesian primary legal materials alongside European Union company law on single-member companies. The findings showed that of the four preconditions only asset separation was partly retained, that internal monitoring was structurally absent because one person held every corporate role, and that statutory veil piercing under Article 153J paragraph (2) therefore operated as the sole residual safeguard. The study further found that the safeguard is remedial rather than preventive, is invoked only by the creditor, and must be proved from records held exclusively by the shareholder against whom it is asserted. It was concluded that creditor protection in this legal form depends less on the existence of veil-piercing grounds than on whether the creditor can obtain the evidence those grounds require.

INTRODUCTION

Limited liability is the most consequential invention of modern company law, and also the most demanding. It permits a person to place capital at risk in a venture while shielding the remainder of that person's property from the venture's creditors. That shield is not granted for its own sake. It is granted because the law simultaneously imposes conditions designed to protect those who deal with the company, namely a clear separation between corporate and personal property, a stated capital that may not be freely withdrawn, organs that monitor one another, and disclosure sufficient for outsiders to assess the company they contract with.

The Job Creation Law introduced into Indonesian company law a form in which most of those conditions no longer operate. Article 153A of the Company Law, as inserted by that legislation, provides that a company meeting the criteria for micro and small enterprises may be established by one person, and establishment is effected by an electronic statement of establishment rather than a notarial deed (Undang-Undang Nomor 6 Tahun 2023). Government Regulation Number 8 of 2021 develops the form further, providing that the individual company is established by one person who is at once the shareholder and the director. There is no second shareholder, no board of commissioners, and no general meeting in the ordinary sense; the decisions of the sole shareholder carry the force of a general meeting resolution.

The result is a legal form in which one person occupies every corporate role while limited liability remains intact. Article 153J paragraph (1) states that the shareholder of a company for micro and small enterprises is not personally liable for obligations entered into on behalf of the company and is not liable for losses beyond the shares held. Paragraph (2) then removes that protection in four situations: where the requirements for the company to be a legal person have not been met, where the shareholder in bad faith exploits the company for personal purposes, where the shareholder is involved in an unlawful act committed by the company, and where the shareholder unlawfully uses the company's property in a way that renders the company unable to pay its debts.

Indonesian scholarship on this form is substantial but has concentrated on establishment procedure, on the role of the notary, and on descriptive comparison with the conventional limited liability company. The question that has received markedly less attention is the one that matters to those who extend credit: whether statutory veil piercing, standing alone, can perform the protective work that four structural preconditions previously performed together, and whether a creditor is practically able to invoke it. That question is not academic. It determines whether a supplier, a lender, or an employee dealing with such a company holds a claim that can be realised.

This study therefore aims to identify the structural preconditions on which limited liability rests and to establish which of them survive in the individual company, to analyse the four grounds of statutory veil piercing in Article 153J paragraph (2) as a residual safeguard, and to propose a framework by which creditor protection in this form may be strengthened without withdrawing the policy benefit the form was created to deliver. The contribution is twofold. Theoretically, the study reframes veil piercing not as an exception to limited liability but as the last remaining component of a protective structure whose other components have been removed. Practically, it offers a test that courts and drafters can apply. The novelty lies in shifting the enquiry from whether veil-piercing grounds exist to whether the evidence those grounds require is obtainable by the party who must prove them.

RESEARCH METHODS

This study is normative legal research. It treats the norm as its principal object and proceeds through examination of legal materials rather than field data. No interviews were conducted. The choice follows from the character of the problem, which concerns the internal coherence of a legal form and the practical operation of a rule of liability, both of which are answered from the text and structure of the law.

Three approaches are used. The statutory approach examines the provisions governing the individual company, both vertically against the Company Law and horizontally against the regulations on micro and small enterprises. The conceptual approach draws on company law doctrine to reconstruct the preconditions on which limited liability rests, so that the Indonesian form may be assessed against them rather than merely described. The comparative approach places the Indonesian form beside European Union company law on single-member private limited liability companies, chosen because that regime addresses the same structural problem and has been in force long enough for its safeguards to be identifiable.

The primary legal materials comprise Law Number 40 of 2007 on Limited Liability Companies, Law Number 11 of 2020 on Job Creation, Law Number 6 of 2023 confirming the Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation, Law Number 20 of 2008 on Micro, Small and Medium Enterprises, Government Regulation Number 7 of 2021, Government Regulation Number 8 of 2021, and Directive 2009/102/EC on single-member private limited liability companies. Secondary materials comprise Indonesian company law treatises and journal articles published in the last ten years.

Materials were gathered through documentary study of official texts, inventoried, and classified according to the four preconditions used as the analytical framework. Analysis was descriptive and qualitative with deductive reasoning, using grammatical interpretation to establish the meaning of each provision and systematic interpretation to situate it within the Company Law as a whole.

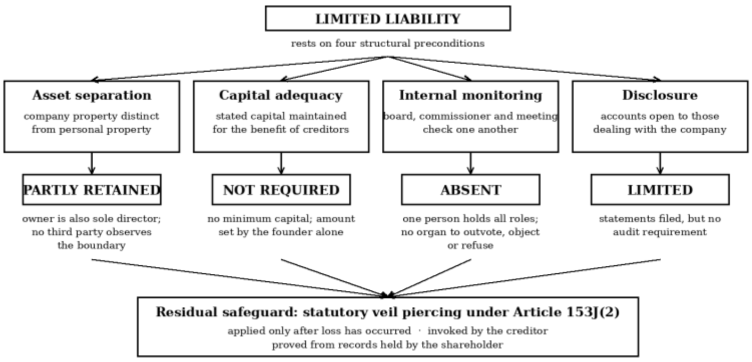
RESULTS AND DISCUSSION

The Structural Preconditions of Limited Liability

Doctrine treats limited liability as a privilege conditioned on the company being genuinely distinct from its owner. Four conditions carry that distinction. The first is asset separation: property acquired by the company belongs to the company and not to the shareholder, so that creditors of each may look only to their own debtor's estate. The second is capital adequacy: a stated capital is contributed and may not be freely returned, so that the company begins life with a fund answerable to creditors. The third is internal monitoring: directors manage, commissioners supervise, and the general meeting appoints and dismisses, so that no single will governs unchecked. The fourth is disclosure: those who deal with the company can learn who stands behind it and what it is worth.

These conditions are not of equal character. Asset separation is a rule about ownership; capital adequacy is a rule about the fund; internal monitoring is a rule about persons; disclosure is a rule about information. What unites them is that each supplies to an outsider something that the outsider cannot supply for itself. A creditor cannot examine the shareholder's conscience, but can read a register, inspect accounts, and rely on the fact that a director who misapplies company property may be called to account by an organ that did not appoint itself.

It follows that removing any one condition does not merely reduce protection by a quarter. The conditions are complementary. Disclosure is valuable because there is something to disclose; monitoring is effective because there is an organ with the standing to act. Where several conditions are removed at once, what remains is not a diminished structure but a different one. Picture 1 sets out the four preconditions and their status in the Indonesian individual company.



Picture 1 Structural Preconditions Of Limited Liability And Their Status In The Individual Company

The Legal Architecture of the Individual Company

The individual company is available only to businesses meeting the criteria for micro and small enterprises. Under Government Regulation Number 7 of 2021 a micro enterprise has business capital of at most one billion rupiah excluding land and buildings, or annual sales of at most two billion rupiah, while a small enterprise has business capital above one billion up to five billion rupiah, or annual sales above two billion up to fifteen billion rupiah. The threshold matters because it defines the population of companies to which the analysis applies, and because it establishes that the form was designed for enterprises whose counterparties are typically suppliers, small lenders, and employees rather than institutional creditors able to negotiate personal guarantees.

Establishment is deliberately simplified. Article 153A permits establishment by one person through a statement of establishment in the Indonesian language, dispensing with the notarial deed required of conventional companies under Article 7 of the Company Law. Government Regulation Number 8 of 2021 provides that the individual company is established by an Indonesian citizen of at least seventeen years of age with legal capacity, by completing the statement of establishment electronically, and that the sole shareholder also serves as director. Changes to the statement of establishment and dissolution are determined by a decision of the sole shareholder, which carries the same legal force as a resolution of the general meeting.

Two features of that architecture deserve emphasis. First, there is no minimum authorised capital; the amount is determined by the founder. Second, the decision of the sole shareholder is equated with a general meeting resolution, which is a sensible drafting solution but does not create a meeting. A meeting is a procedure by which competing wills are reconciled; where there is one will, the equation preserves the form and dissolves the function.

The form nevertheless retains obligations that support disclosure. Financial statements must be prepared, and the company must change its status to a conventional limited liability company where it ceases to meet the criteria for micro and small enterprises or where the number of shareholders exceeds one. These obligations are real and should not be understated. What they do not supply is verification: the statements are prepared by the person whose conduct they record and are not subject to audit. Table 1 places the individual company beside the two alternatives available to the same enterprises.

Table 1 Comparison Of Three Business Forms Available To Micro And Small Enterprises In Indonesia

Aspect	Conventional limited company	Individual company	Sole proprietorship (not a legal person)
Founders required	Two or more persons	One person	One person
Instrument of establishment	Notarial deed	Electronic statement of establishment	No constitutive instrument
Corporate organs	Directors, commissioners, general meeting	Sole shareholder who is also director	None
Minimum capital	Determined by founders, subject to statute	No minimum; set by the founder	Not applicable
Liability of the owner	Limited, subject to veil piercing	Limited, subject to Article 153J(2)	Unlimited
Financial statements	Prepared; audit required in defined cases	Prepared; no audit requirement	Not required
Access by creditors to internal records	Through organs and statutory rights	Effectively none	Not applicable; personal estate answerable

Statutory Veil Piercing under Article 153J Paragraph (2)

Article 153J paragraph (2) sets out four grounds on which limited liability ceases to apply. Read together they form a coherent scheme, and the drafting deserves credit for addressing directly a risk that many jurisdictions have left to judicial development. Each ground, however, carries a distinct evidentiary burden, and it is in that respect that they differ sharply from one another.

The first ground, that the requirements for the company to be a legal person have not been met, is the most accessible to a creditor. It concerns matters of record: whether registration was effected, whether the statement of establishment was duly completed. A creditor can establish this from public sources without entering the company's internal affairs.

The second ground, bad-faith exploitation of the company for personal purposes, and the fourth, unlawful use of company property rendering the company unable to pay its debts, both require the creditor to demonstrate what was done with corporate assets and with what state of mind. In a conventional company such matters surface through the accounts, through the objections of a co-shareholder, or through a commissioner's supervision. In the individual company none of these routes exists. The only records are those kept by the shareholder, who is also the director, and who is the person against whom the ground is asserted.

The third ground, involvement in an unlawful act committed by the company, is intermediate. Where the unlawful act is itself visible, for instance a tort against the creditor, the shareholder's involvement may be inferred from the fact that the shareholder is the only human agent through whom the company can act. That inference is doctrinally significant and, in the author's view, under-used: in a company where one person holds every role, attribution of the company's act to that person requires no elaborate reasoning.

The pattern that emerges is that the grounds most likely to be engaged in practice, namely misuse of corporate property, are precisely those hardest for a creditor to prove, while the ground easiest to prove, namely defective incorporation, is the least likely to arise once electronic registration has been completed. A safeguard whose accessibility varies inversely with the frequency of the mischief it addresses is not a complete answer.

The Evidentiary Problem and a Comparative Reading

European Union company law confronted the same structural problem when it permitted single-member private limited liability companies, and its response is instructive. Directive 2009/102/EC provides that the sole member exercises the powers of the general meeting, and requires that decisions taken by the sole member in exercising those powers be recorded in minutes or drawn up in writing. It further requires that contracts between the sole member and the company as represented by that member be recorded in minutes or drawn up in writing, with member states free not to apply that requirement to current operations concluded under normal conditions (Directive 2009/102/EC, 2009).

The significance of those two requirements is easily missed because they appear procedural. They are not. Where one person is both parties to a transaction, the transaction leaves no natural trace: there is no counterparty to keep a copy, no negotiation to reconstruct, no objection to record. The writing requirement manufactures the trace that the structure would otherwise fail to produce. It converts an internal act into an external record, and in doing so it makes proof possible for a creditor who was not present.

Indonesian law contains no equivalent. The decision of the sole shareholder is equated with a general meeting resolution, but there is no express obligation that transactions between the shareholder and the company be recorded in writing. This is the specific gap this study identifies. It is narrower than a general complaint that the individual company is under-regulated, and correspondingly easier to close.

The comparison also cautions against overstatement. The Directive does not withdraw limited liability from single-member companies, nor does it impose minimum capital as the price of the form. It accepts the policy objective of making incorporation accessible and addresses the risk at the point where the risk actually arises, namely the invisibility of self-dealing. That is the model this study commends.

A Proposed Framework for Creditor Protection

On the basis of the foregoing the author proposes a framework of three layers, ordered by the burden each imposes.

The first layer is a recording obligation. Contracts and transfers of value between the sole shareholder and the individual company should be recorded in writing, with an exception for ordinary transactions concluded on normal terms so that the burden does not fall on routine trading. This layer creates evidence without creating cost for compliant businesses, since a business that keeps records already satisfies it.

The second layer is an evidentiary consequence. Where such records are absent and a creditor asserts a ground under Article 153J paragraph (2) concerning the use of corporate property, the burden of showing that the property was applied for corporate purposes should fall on the shareholder. This does not reverse the burden of proof in general, and it does not presume bad faith. It attaches a consequence to the absence of a record that the shareholder alone was in a position to make. The justification is the same as that which underlies the recording obligation itself: the party who controls the information should bear the risk of its absence.

The third layer is disclosure proportionate to exposure. Rather than imposing audit on every individual company, which would defeat the purpose of the form, the financial statements of an individual company should be accessible to a person who can show an existing legal relationship with it. The creditor who has already extended credit has an interest that a member of the public does not, and that interest can be recognised without general publication.

Taken together the three layers restore, at modest cost, what the form removed. They do not reinstate internal monitoring, which cannot be reinstated where one person holds every role, but they replace its function, which was to ensure that the use of corporate property left a trace that someone other than the owner could examine. That, and not the multiplication of organs, is what creditor protection ultimately requires.

CONCLUSION

The individual limited liability company retains limited liability while dispensing with three of the four structural preconditions on which that privilege classically rests, since capital adequacy is not required, internal monitoring is structurally absent because one person is at once sole shareholder and sole director, and disclosure is unverified, leaving asset separation only partly retained and statutory veil piercing under Article 153J paragraph (2) as the sole residual safeguard; that safeguard is remedial rather than preventive, operates only when invoked by a creditor, and in respect of the grounds most likely to arise in practice must be proved from records held exclusively by the shareholder against whom it is asserted, so that creditor protection in this form turns less on the existence of veil-piercing grounds than on the obtainability of the evidence they require, and the appropriate response is not to withdraw the form but to require that transactions between the sole shareholder and the company be recorded in writing, to attach an evidentiary consequence to the absence of such records, and to make financial statements accessible to those with an existing legal relationship with the company.

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