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Litigation & Corporate Legal

LEGAL ARTICLE

Corporate Law Series

General Overview of Indonesian Company Law

Part 1

ABSTRACT

This Article is prepared with the intention to provide general information regarding the procedures of establishment, capitalization and legal basis of company law in Indonesia.

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27 June 2019

A GENERAL OVERVIEW OF INDONESIAN COMPANY LAW

~ CORPORATE LAW SERIES ~

A. BACKGROUND - THE MECHANISM OF COMPANY LAW IN INDONESIA

In the practice of corporate law in Indonesia, a company can be divided into two types, which are the Legal Entity Businesses and Non-Legal Entity Businesses (or commonly known as Business Entity).

A legal entity recognises the separation of assets between its founders and the established entity, while a business entity does not. Establishing a legal entity requires the approval from several government bodies/agencies, while establishing a business entity are less bureaucratic procedures.

In the Indonesian economic system the most commonly used as business vehicles is a business entity in the form of a small business or an individual business entity.

Regulations governing the business entity in the form of a small business or an individual business entity can be found in the Code of Commerce (*Kitab Undang-Undang Hukum Dagang/KUHD – Wetboek van Koophandel/WvK*) and the Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPerdata – Burgerlijk Wetboek/BW*) inherited from Dutch colonialism, which are applied in Indonesia based on the principle of Concordance and most of its legal provisions still prevail.

B. CRUCIAL LEGAL TERMS OF INDONESIAN COMPANY LAW

1) The Company Law in General

According to the Law No. 3 of 1982 regarding The Obligation of Company Registration:

Company is any form of business that carries out permanent and continuous business activities and which is established, works and domiciled within the territory of the Republic of Indonesia, and for the purpose of obtaining profits.

According to the Law No. 8 of 1997 regarding Company's Document:

Company is any form of business that carries out permanent and continuous business activities with the aim of obtaining profits, whether held by individuals or business entities in the form of legal entities or non-legal entities, which are established and domiciled within the territory of the Republic of Indonesia.

Meanwhile according to the author, the definition of Company Law is the whole legal rule in various laws and regulations governing the systematics and administration of a company, starting from the incorporation process, legal relationship between the founders and with third parties, until the completion of the procedures for disputes arising in the implementation.

2) The Law of Limited Liability Companies (LLC)

The Indonesian terms for LLC is PT (is short for Perseroan Terbatas).

According to the Law No. 1 of 1995 regarding Limited Liability Companies, which already revoked and replaced by Law No. 40 of 2007, defines the following terms:

Limited Liability Company, hereinafter referred to as the Company, means a legal entity established based on an agreement, in order to conduct business activities with the Company's Authorized Capital divided into shares and which satisfies the requirements as stipulated in this Law and its implementing regulations.

According to the Law No. 40 of 2007 regarding Limited Liability Companies ("Indonesian LLC Law or Indonesian Company Law / ICL"):

Limited Liability Company, hereinafter referred to as the Company, means a legal entity constitutes a capital alliance, established based on an agreement, in order to conduct business activities with the Company's Authorized Capital divided into shares and which satisfies the requirements as stipulated in this Law, and its implementing regulations.

A Limited Liability Company, or officially known as "**Perseroan Terbatas / PT**", comprised of shares and must be established by minimum of two shareholders as well as a drawn-up Deed of Establishment ("**DoE**") that is executed before a Public Notary which includes the company's Articles of Association.

Once the DoE is approved by the Minister of Law and Human Rights, the PT officially gains its status as a legal entity in Indonesia.

The most common categories of PT are:

- 1) Wholly owned by Indonesian Individuals or Legal Entities (commonly known as “**PT Lokal**”);
- 2) Wholly or partially owned by Foreign Investors (commonly known as “**PT Penanaman Modal Asing / PT PMA**”); and
- 3) Wholly or partially owned by the State, categorised as a State-Owned Enterprises (commonly known as “**BUMN Persero**”).

A PT can be established in the form of a **privately-owned** company or a **publicly listed** company. A privately-owned company can voluntarily transform itself into a publicly listed company and vice-versa by following the requirements as set out in the Capital Market Law (Law No. 8 of 1995 on Capital Market) and its implementing regulations.

However, a privately-owned company can automatically transform into a Public Company (eventhough not being listed) if it has fulfilled the minimum requirement of 300 shareholders and IDR 3 billion on its paid-up capital.

A Public Company does not need to be listed at the Indonesian Stock Exchange. However, it must be registered at the Financial Services Authority (officially known as “*Otoritas Jasa Keuangan / OJK*”).

C. THE MOST COMMON FORMS OF BUSINESSES IN INDONESIA

Based on various laws and regulations governing the systematics of companies in Indonesia, various forms of business entities can be found in Indonesia, as follows:

1) Legal Entities

1. Limited Liability Company (officially known as “*Perseroan Terbatas / PT*”);
2. Cooperatives (officially known as “*Koperasi*”);
3. Foundation (officially known as “*Yayasan*”);

4. SOE in the form of PT; and
5. Pension funds (officially known as “**Dana Pensiun**”).

2) **Business entities**

1. Civil Partnerships / *Persekutuan Perdata (Maatschap)*;
2. Firms / *Firma (Venootschap Onder Firma)*;
3. Limited Partnerships / *Persekutuan Komanditer (Commanditaire Venootschap / CV)*;
4. Any form of Individual Business Entity, such as Trading Businesses (commonly known as “*Perusahaan Dagang/PD*”); and
5. Other forms of business, including Foreign Trade/Services Representative Office who are domiciled and operating their businesses in the territory of the Republic of Indonesia.

From the abovementioned legal entities, PT is the most commonly used as a business vehicles in Indonesia, while CV and Individual Businesses are the most commonly used business entities in Indonesia.

D. INCORPORATION OF LOCAL PT / LLC IN INDONESIA

1) **The Deed of Establishment (“DoE”)**

A PT must execute its DoE and Articles of Association through a notarial deed in Bahasa Indonesia.

2) **The Articles of Association (“AoA”)**

An AoA must include the following minimum provisions:

- The company’s name and domicile/headquarters;
- Business activities and objectives;
- Terms of establishment;
- The capital structure which comprises of the amount of authorized capital, subscribed capital, and paid-up capital;
- The number of shares and their classifications, including the number of shares allotted to each share class;

- Names and titles of members of the BoC and BoD;
- Determination of the place and procedure to conduct the GMS;
- Procedures for the appointment, replacement, and dismissal of members of the BoC and BoD; and
- Procedures for the use of profits and allocation of dividends.

In addition to these mandatory provisions, the company's AoA may set forth other matters as agreed by the shareholders, so long as these are consistent with Indonesian law.

A PT must amend their AoA every time significant changes occur, in particular changes to:

- Company name and/or domicile/headquarter;
- Business objectives or activities;
- Period of incorporation;
- Authorized capital;
- Amounts of subscribed and paid-up capital (share capital reductions);
- Company status from public to private and vice versa;
- Decisions to expand the company's scope of business; and
- Any other important events.

3) The Approval from the Minister of Law and Human Rights

The Minister of Law and Human Rights ("MOLHR") has superior authority in giving an approval to the establishment of a PT in Indonesia.

MOLHR also has authority to approve any amendments to the AoA which made by the GMS.

4) Company's Permits or Licenses

After obtaining approval from the MOLHR, the PT must then obtain appropriate permits or licences before it commences production/operation, which includes the following:

1. Certificate of Domicile (*Surat Keterangan Domisili Perusahaan/SKDP*). However this kind of domicile letter was no longer required in Jakarta according to the recent Publication from the local government officials No. 27 of 2019 dated 26 April 2019;
2. Taxpayer Registration Number (*Nomor Pokok Wajib Pajak/NPWP*); and
3. Any relevant and required business licenses as governed by Indonesian Business Fields Classification (*Klasifikasi Baku Lapangan Usaha Indonesia/KBLI*).

The applications of business licenses can be submitted to the new system called OSS (short for Online Single Submission), which just been released by the government in June 2018, as regulated under the Government Regulation Number 24 of 2018 regarding Electronically Integrated Business Licensing Services.

Key legislations:

- Indonesian Code of Commerce (*Kitab Undang-Undang Hukum Dagang/KUHD – Wetboek van Koophandel/WvK*);
- Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata/KUHPerdata – Burgerlijk Wetboek/BW*);
- Law No. 40 of 2007 regarding Limited Liability Companies (Indonesian Company Law);
- Law No. 25 of 1992 regarding Cooperatives, which already revoked by Law No. 17 of 2012;
- Law No. 16 of 2001 regarding Foundation, which amended by Law No. 28 of 2004;
- Law No. 19 of 2003 regarding State Owned Enterprises;
- Law No. 11 of 1992 regarding Pension Funds;
- Minister of Trade Regulation No. 76 of 2018 regarding The Implementation of Business Registration; and
- Government Regulation No. 24 of 2018 regarding Integrated Online Submission of Business Licensing Services.

Citations:

- Related laws and regulations;
- Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas*, Jakarta: Raih Asa Sukses, 2015;
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