THE URGENCY OF ADDING REQUIREMENTS FOR THE ESTABLISHMENT OF AN INDIVIDUAL LIMITED LIABILITY COMPANY AS A FORM OF PREVENTION OF RECIDIVIST ACTS OF DIRECTORS

(STUDY OF GOVERNMENT REGULATION NUMBER 8 OF 2021)

THESIS

BY

AKHZA FADHILA ISHDIQANA

200202110011

SHARIA ECONOMIC LAW DEPARTMENT

SHARIA FACULTY

STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM

MALANG

2023

STATEMENT OF THE AUTHENTICITY

STATEMENT OF THE AUTHENTICITY

By Allah SWT

With awareness and responsibility for scientific development, the author states that the thesis entitled:

THE URGENCY OF ADDING REQUIREMENTS FOR THE ESTABLISHMENT OF AN INDIVIDUAL LIMITED LIABILITY COMPANY AS A FORM OF PREVENTION OF RECIDIVIST ACTS OF DIRECTORS

(STUDY OF GOVERNMENT REGULATION NUMBER 8 OF 2021)

It is really a scientific work compiled by yourself, not the result of duplicating or transferring data belonging to others. If in the future it is proven that this thesis has similarities in both content, logic, and data, in whole or in part, then the thesis and title obtained are automatically null and void.

Malang, 23 November 2021

Writer

Akhza Fadhila Ishdiqana

NIM 200202110011

APPPROVAL SHEET

APPROVAL SHEET

After reading and correcting **Akhza Fadhila Ishdiqana**'s thesis, NIM: 200202110011 **Sharia Economic Law Department, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang** with the title:

THE URGENCY OF ADDING REQUIREMENTS FOR THE ESTABLISHMENT OF AN INDIVIDUAL LIMITED LIABILITY COMPANY AS A FORM OF PREVENTION OF RECIDIVIST ACTS OF DIRECTORS

(STUDY OF GOVERNMENT REGULATION NUMBER 8 OF 2021)

The supervisor declares that the thesis has met the scientific requirements to be submitted and tested by the Board of Examiners.

Malang, 18 December 2023

Head of Department Sharia Economic Law	Thesis Supervisor
Dr. Fakhruddin, M.HI. NIP. 197408192000031002	Su'ud Fuadi, S.HI., M.EI. NIP. 198308042016080110 20

CONSULTATION PROOF

KEMENTERIAN AGAMA UNIVERSITAS ISLAM NEGERI
MAULANA MALIK IBRAHIM MALANG
FAKULTAS SYARIAH
Jl. Gajayana 50 Malang Telp. (0341) 551354 Fax. (0341) 572533

PROOF OF CONSULTATION

Name : Akhza Fadhila Ishdiqana

NIM : 200202110011

Department : Sharia Economic Law

Thesis Supervisor : Su'ud Fuadi, S.HI., M.EI.

Thesis Title : The Urgency of Adding Requirements for The Establishment of an Individual Limited Liability Company as a Form of Prevention of Recidivist Acts of Directors (Study of Government Regukation Number 8 of 2021)

No	Date	Consultation Materials	Signature
1	10 August 2023	Proposal	
2	16 August 2023	Revised title	
3	18 August 2023	Revised statement of problem	
4	22 August 2023	Revised statement of problem	
5	04 September 2023	Revised statement of problem	
6	06 September 2023	Revised research background	
7	03 October 2023	Revised research background	
8	27 October 2023	Revised seminar proposal	
9	15 October 2023	Revised chapter III	
10	21 November 2023	Acc Chapter III, IV, abstract	

Malang, 21 November 2023

Head of Department

Dr. Fakhruddin, M.HI.
NIP. 197408192000031002

LEGITIMATION SHEET

LEGITIMATION SHEET

Thesis examiner board of Akhza Fadhila Ishdiqana, NIM 200202110011, Student of Sharia Economic Law Department, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang with the title:

THE URGENCY OF ADDING REQUIREMENTS FOR THE ESTABLISHMENT OF AN INDIVIDUAL LIMITED LIABILITY COMPANY AS A FORM OF PREVENTION OF RECIDIVIST ACTS OF DIRECTORS

(STUDY OF GOVERNMENT REGULATION NUMBER 8 OF 2021)

Has been specified **PASS** with the value: 89 (A)

The Examiners:

1. Ahmad Sidi Pratomo, M.A.
   NIP 198404192019031002
   ( ) Chief Examiner

2. Su'ud Fuadi, S.HI., M.EI.
   NIP 19830804201608011020
   ( ) Examiner Secretary

3. Rizka Amaliah, M.Pd
   NIP 198907092019032012
   ( ) Main Examiner

Malang, 18 December 2023

Dean,

Prof. Dr. Sudirman, MA., CAHRM.
NIP. 197708222005011003

MOTTO

“have courage and be kind.”

AKNOWLEDGEMENT

All praise and gratitude to the presence of Allah S.W.T who has poured out mercy and *hidayah* so that writer can be at this point. The culmination of getting a bachelor's degree, as well as being the first step for the next journey. Prayers and greetings remain bestowed on the Prophet Muhammad SAW who has brought light and peace, as a form of encouragement to writer to dare to step and persevere, so as to complete the thesis entitled:

THE URGENCY OF ADDING REQUIREMENTS FOR THE ESTABLISHMENT OF AN INDIVIDUAL LIMITED LIABILITY COMPANY AS A FORM OF PREVENTION OF RECIDIVIST ACTS OF DIRECTORS

(STUDY OF GOVERNMENT REGULATION NUMBER 8 OF 2021)

With all the efforts, guidance, and support from various parties in the process of writing this thesis, writer would like to express her gratitude to:

1. Prof. Dr. H. M. Zainuddin, M.A. as Rector of State Islamic University Maulana Malik Ibrahim Malang
2. Prof. Dr. Sudirman, M.A.CAHRM as Dean of Sharia Faculty State Islamic University Maulana Malik Ibrahim Malang
3. Dr. Fakhruddin, M.HI. as Head of Department Sharia Economic Law State Islamic University Maulana Malik Ibrahim Malang
4. Dr. Suwandi, M.H as Guardian Lecturer who has guided and guarded writer during her study at State Islamic University Maulana Malik Ibrahim Malang
5. Su'ud Fuadi, M.HI., M.EI. as Thesis Supervisor. Writer would like to thank you profusely for your guidance, advice, support, and for taking the time during the process and completion of this thesis writing

6. Mrs. Kurniasih Bahagiati, M.H., Mrs. Dwi Fidhayanti, M.H., Mrs. Risma Nur Arifah, M.H., Mrs. Dra. Hj. Enik Faridaturrohmah, M.H., and Mr. Ahmad Sidi Pratomo, M.A., as lecturer of Sharia Economic Law who have given so much inspiration, motivation, and various forms of opportunities for writer, that she can make progress to this point. Everything that is given will always be implanted in writer's next step
7. All lecturers of Sharia Faculty State Islamic University Maulana Malik Ibrahim Malang who have fostered, educated, and provided useful knowledge to writer
8. Employee staff Sharia Faculty State Islamic University Maulana Malik Ibrahim Malang, most important Mr. Heru, writer would like to thank you for your participation and all assistance in completing this thesis
9. Mama, thank you for your sweat and tears, for your tiredness and pain, for all the struggles that left you breathless. Writer wouldn't be at this point if mama is not around
10. Dek Aya, as the younger sister of the writer who is really choosy. Thank you for smiling and crying a lot, so that it became an encouragement for writer to survive and life
11. Junior high school friends whose group names always change, currently their names are 7icons (might change soon). Aufa, Meli, Ayak, Naroh, Mili, dan Onawa, thank you for being with writer for almost 9 years. From here on each journey of us will be apart, writer always prays for your happiness and success wherever life takes you
12. Unet, thank you for being a reminder friend of the afterlife and being in both ups and downs. Thank you for celebrating a lot of things with writer
13. Yolan Hardika Pratama, thank you for all the help and support. Thank you for sharing the joys and sorrows with writer. The writer hopes to see your success in the future
14. Group “Anak Kuat”, Sean, Icus, Inton, and Shilo, thank you for being the safest place for writers while stay in Malang. Writer hopes that this friendship will last

a long time, although distance and time will separate after graduation. My forever Dorothea.

Writer realizes that this thesis has many shortcomings, therefore suggestions and constructive criticism are very much expected for future improvement. Writer hopes that the knowledge gained while at State Islamic University Maulana Malik Ibrahim Malang can be useful for all circles.

Malang, 27 November 2023

Akhza Fadhila Ishdiqana

NIM 200202110011

TRANSLITERATION GUIDE

In writing scientific papers, the use of foreign terms is often inevitable. In general, according to the General Guidelines for Indonesian Spelling, foreign words are written (printed) in italics. In the context of Arabic, there are special transliteration guidelines that apply internationally. The following table presents the transliteration guidelines as a reference for writing scientific papers.

A. Consonants

The list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arabic	Indonesian	Arabic	Indonesian
أ	`	ط	ṭ
ب	b	ظ	ẓ
ت	t	ع	’
ث	th	غ	gh
ج	j	ف	f
ح	ḥ	ق	q
خ	kh	ك	k
د	d	ل	l
ذ	dh	م	m
ر	r	ن	n
ز	z	و	w
س	s	ه	h
ش	sh	ء	’
ص	ṣ	ي	y
ض	ḍ		

Hamzah (ء) which is located at the beginning of the word following its vowel without being marked anything. If *hamzah* (ء) located in the middle or at the end, then it is written with a sign (’).

B. Vocal

Arabic vowels, such as the Indonesian vowel, consist of single or monophhongs and double or diphthong vowels.

Arabic singular vowels which symbols are signs or vowels, transliteration as follows:

Arabic	Name	Latin	Name
اَ	*Fathah*	A	A
اِ	*Kasrah*	I	I
اُ	*Dammah*	U	U

Arabic double vowels whose symbols are a combination of harakat and letters, the transliteration is a combination of letters, namely:

Sign	Name	Latin	Name
اَيْ	*Fathah* and *ya*	Ai	A and I
اَوْ	*Fathah* and *wau*	Au	A and U

Example:

كَيْفَ : *kaifa*

هَوْلَ : *haula*

C. *Maddah*

Maddah or long vowels which symbols are in the form of harkat and letters, transliteration in the form of letters and signs, namely:

***Harkat* and Letters**	**Name**	***Harakat* dan Sign**	**Name**
اَ يَ	*Fathah* and *alif* or *ya*	ā	a and line above
يِ	*Kasrah* and *ya*	Ī	i and the line above
وُ	*Dammah* and *wau*	ū	u and the line above

Example:

مَاتَ : *māta*

رَمَي : *ramā*

قِيْلَ : *qīla*

يَمُوتُ : *yamūtu*

D. Ta Marbutah

The transliteration for *ta marbūṭah* is twofold: *ta marbūṭah* who lives or gets the dignity of *fatḥah*, *kasrah*, and *ḍammah*, the transliteration is [t]. As for *ta marbūṭah* who died or received breadfruit dignity, the transliteration is [h].

If a word ending in *ta marbūṭah* is followed by a word that uses the clothing *al-* and the readings of the two words are separate, then *ta marbūṭah* is transliterated with *ha*.

(h) Example:

رَوْضَةُ الأَطْفَال : *rauḍah al-aṭfāl*

المَدِينةُ الفَضِيْلَةُ : *al-madīnah al-fāḍīlah*

الحِكْمِةُ : *al-ḥikmah*

E. *Syaddah* (*Tasydid*)

Syaddah or *tasydīd* which in the Arabic writing system is denoted by a tasydīd sign (-) ĭn this transliteration is denoted by a letter loop (double consonant) marked with a *syaddah*. Example:

رَبَّنَا : *rabbanā*

نَجَّيْنَا : *najjainā*

الحَقُّ : *al-ḥaqq*

الحَجُّ : *al-ḥajj*

نُعِّمَ : *nu''ima*

عَدُوٌّ : *aduwwu*

If the letter ى has tasydīd at the end of a word and is preceded by a letter with kasrah (–) So it is transliterated like the letters maddah (ī).

Example:

عَلِيّ : ‘*Alī* (neither ‘*Aliyy* nor ‘*Aly*)

عَرَبِيّ : ‘*Arabī* (neither ‘*Arabiyy* nor ‘*Araby*)

F. An Article

An article in the Arabic writing system is denoted by letters (ال) (*alif lam ma'arifah*). In this transliteration guideline, an article is transliterated as usual, *al-*, both when it is followed by the letter *shamsiah* and the letter *qamariah*. An article does not follow the sound of the direct letter that follows it. An article is written separately from the word that follows it and is connected by a horizontal line (-).

Example:

الشَّمْسُ : *al-syamsu* (not *asy-syamsu*)

الزَّلزَلَة : *al-zalzalah* (not *az-zalzalah*)

الفَلْسَفَة : *al-falsafah*

البِلادُ : *al- bilādu*

G. *Hamzah*

Rules for transliteration of *hamzah* letters into apostrophes (’) only applicable to *hamzah* located in the middle and end of the word. However, if *hamzah* is located at the beginning of a word, it is not symbolized, because in Arabic writing it is *alif*.

Example:

تَأْمُرُونَ : *ta’murūna*

النَّوءُ : *al-nau’*

شَيءٌ : *syai’un*

أُمِرتُ : *umirtu*

H. Arabic Words Commonly Used in Indonesian

A transliterated Arabic word, term or sentence is a word, term or sentence that has not been standardized in Indonesian. Words, terms or sentences that are already familiar and part of the Indonesian's vocabulary, or have often been written in Indonesian writing, are no longer written according to the transliteration method above. As example the word Qur'an (from al-Qur’ān), Sunnah, hadith, special and

general. However, if the words become part of a series of Arabic texts, they must be transliterated in their entirety.

Example:

Fī ẓilāl al-Qur'ān

Al-Sunnah qabl al-tadwīn

Al-'Ibārāt Fī 'Umūm al-Lafẓ lā bi khuṣūṣ al-sabab

I. *Lafz Al-Jalalah* (الله)

The word "Allah" preceded by particles such as *jarr* and other letters or positioned as *muḍāf ilaih* (nominal phrase), transliterated without the letters *hamzah*.

Contoh:

دِيْنُاللهِ : *dīnullāh*

As for *ta marbūṭah* at the end of the word attributed to *lafẓ al-jalālah*, transliterated with the letter [t]. Example:

هُمْ فِيْ رَحمَةِاللهِ : *hum fi rahmatullah*

J. Capital Letters

Although the Arabic writing system does not recognize capital letters (All Caps), in transliteration they are subject to provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letters of a person's name (person, place, month) and the first letter at the beginning of a sentence. When the name of the self is preceded by an article (*al-*), So what is written in capital letters remains the initial

letter of the self's name, not the initial letter of the article. If it is located at the beginning of the sentence, then the letter A of the article uses capital letters (*Al-*). The same provisions also apply to the initial letter of the reference title preceded by the clothing word *al-*, both when it is written in the text and in the reference notes (CK, DP, CDK, dan DR).

Example:

Wa mā Muḥammadun illā rasūl

Inna awwala baitin wuḍi'a linnāsi lallażī bi Bakkata mubārakan

Syahru Ramaḍān al-lażī unzila fīh al-Qur'ān

Naṣīr al-Dīn al-Ṭūs

Abū Naṣr al-Farābī

Al-Gazālī

Al-Munqiż min al-Ḍalāl

TABLE OF CONTENTS

TABLES

ABSTRAK

Akhza Fadhila Ishdiqana, 200202110011, **The Urgency of Adding Requirements for The Establishment of an Individual Limited Liability Company as a Form of Prevention of Recidivist Acts of Directors (Study of Government Regulation Number 8 of 2021)**, Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Dosen Pembimbing Su'ud Fuadi, S.HI., M.EI.

Kata Kunci: Persyaratan Pendirian PT, Pengangkatan Direksi, Tindakan *Recidive*

Kejahatan dalam dunia korporasi merupakan kejahatan keuangan yang sulit untuk dilacak. Berbagai macam kejahatan yang dibalut dengan memanipulasi arus uang kerap terjadi, seperti korupsi, pencucian uang, penipuan, dan lainnya. Di tengah-tengah dinamika kejahatan yang semakin kompleks, lahirnya Undang-Undang Cipta Kerja melahirkan jenis perseroan yang baru dengan ketentuan pendirian yang baru pula, yakni Perseroan Terbatas Perorangan. Namun, persyaratan pendirian yang baru justru menimbulkan tidak sinkronnya hukum dan memunculkan celah-celah yang harus diatasi dengan menyelaraskan syarat pendirian Perseroan Perorangan dengan Perseroan Persekutuan Modal yang dilandasi oleh Undang-Undang Nomor 40 tahun 2007. Dengan demikian, penelitian ini bertujuan untuk menemukan urgensi dari penambahan syarat pendirian PT Perorangan dan bagaimana implikasinya nanti pada kedudukan direksi.

Metode yang digunakan adalah metode penelitian normatif dengan pendekatan undang-undang, yang selanjutnya mengkaji bahan-bahan hukum untuk menjawab permasalahan ini. Pada penelitian ini akan menganalisa bahan hukum sekunder, seperti peraturan perundangan, buku-buku, hingga penelitian terdahulu. Pengumpulan bahan hukum dilakukan melalui prosedur inventarisasi dan identifikasi peraturan perundang-undangan, serta klasifikasi dan sistematisasi bahan hukum sesuai permasalahan dalam penelitian ini.

Dengan demikian, penelitian ini menghasilkan kesimpulan bahwa apabila Peraturan pemerintah Nomor 8 Tahun 2021 dan Undang-Undang Nomor 40 Tahun 2007 diselaraskan dalam syarat direksi, maka tentunya akan menimbulkan efek jera tidak hanya bagi pelaku kejahatan tindak pidana ekonomi, tapi juga sebagai upaya preventif untuk mencegah kejahatan yang sama terjadi, entah pada mantan tindak pidana maupun orang lain. Hal demikian karena pembatasan dan ditutupnya akses bagi mantan terpidana ekonomi untuk melakukan kejahatan yang sama lagi. selain itu, akan berdampak pada pencegahan kejahatan yang sama terjadi dalam waktu yang relative singkat.

ABSTRACT

Akhza Fadhila Ishdiqana, 200202110011, **The Urgency of Adding Requirements for The Establishment of an Individual Limited Liability Company as a Form of Prevention of Recidivist Acts of Directors (Study of Government Regulation Number 8 of 2021),** Sharia Economic Law department, Sharia Faculty, State Islamic University Maulana Malik Ibrahim Malang, Thesis Supervisor Su'ud Fuadi, S.HI., M.EI.

Keywords: Establishment Requirements, Appointment of Directors, Recidivist Action

Crimes in the corporate world are financial crimes that are difficult to trace. Various kinds of crimes wrapped in manipulating the flow of money often occur, such as corruption, money laundering, fraud, and others. In the midst of increasingly complex crime dynamics, the birth of the Job Creation Law gave birth to a new type of company with new establishment provisions as well, namely Individual Limited Liability Company. However, the new establishment requirements actually cause legal unsynchronization and create loopholes that must be overcome by harmonizing the establishment requirements of the Individual Company with the Capital Partnership Company based on Law Number 40 of 2007. Thus, this research aims to find the urgency of the additional requirements for the establishment of an Individual Company and how the implications will be on the position of the board of directors.

The method used is a normative research method with a statutory approach, which further examines legal materials to answer this problem. This research will analyze secondary legal materials, such as laws and regulations, books, and previous research. The collection of legal materials is carried out through the procedure of inventorying and identifying laws and regulations, as well as classifying and systematizing legal materials according to the problems in this study.

Thus, this research results in the conclusion that if Government Regulation No. 8 of 2021 and Law No. 40 of 2007 are harmonized in terms of directors, it will certainly have a deterrent effect not only for perpetrators of economic crimes, but also as a preventive effort to prevent the same crimes from occurring, whether for former criminals or other people. This is due to the restriction and closure of access for former economic offenders to commit the same crime again. In addition, it will have an impact on preventing the same crime from occurring in a relatively short time.

خلاصة

أخزا فضيل اشديكانا، 200202110011، **الحاجة الملحة إلى إضافة متطلبات إنشاء شركة فردية ذات مسؤولية محدودة كشكل من أشكال منع أعمال المديرين المتكررة (دراسة اللائحة الحكومية رقم 8 لعام 2021)**، قسم القانون الاقتصادي الشرعي، كلية الشريعة، الولاية الجامعة الإسلامية مولانا مالك إبراهيم مالانج، مشرف الأطروحة سعود فوادي،

الكلمات المفتاحية: متطلبات تأسيس شركة الاتصالات، تعيين المديرين، إجراءات العود

الجرائم في عالم الشركات هي جرائم مالية Cipta Kerja يُظهر إصدار قانون يصعب تعقبها. وكثيراً ما تحدث أنواع مختلفة من الجرائم المغلفة بالتلاعب بتدفق الأموال، مثل الفساد وغسل الأموال والاحتيال وغيرها. وفي خضم ديناميكيات الجريمة المتزايدة التعقيد، أدى ميلاد قانون خلق فرص العمل إلى ولادة نوع جديد من الشركات مع أحكام تأسيس جديدة أيضًا، وهي الشركة الفردية ذات المسؤولية المحدودة. ومع ذلك، فإن متطلبات التأسيس الجديدة تتسبب في الواقع في عدم التزامن القانوني وتخلق ثغرات يجب التغلب عليها من خلال مواءمة متطلبات تأسيس الشركة الفردية مع شركة الشراكة المالية بناءً على القانون رقم 40 لسنة 2007. وبالتالي، يهدف هذا البحث إلى إيجاد مدى إلحاح .المتطلبات الإضافية لتأسيس شركة فردية وتأثيرها على منصب مجلس الإدارة

الطريقة المستخدمة هي طريقة بحث معيارية ذات منهج قانوني، والتي تدرس بشكل أكبر المواد القانونية للإجابة على هذه المشكلة. وسيقوم هذا البحث بتحليل المواد القانونية الثانوية، مثل القوانين واللوائح والكتب والأبحاث السابقة. ويتم جمع المواد القانونية من خلال إجراء جرد وتحديد القوانين واللوائح، فضلا عن تصنيف وتنظيم المواد القانونية ..وفقا للمشاكل في هذه الدراسة

ومن ثم يخلص هذا البحث إلى نتيجة مفادها أنه إذا تم التوافق بين النظام الحكومي رقم 8 لسنة 2021 والقانون رقم 40 لسنة 2007 في ما يتعلق بالمديرين، فمن المؤكد أنه سيكون له أثر رادع ليس فقط لمرتكبي الجرائم الاقتصادية، بل أيضا كرد فعل. بذل جهد وقائي لمنع وقوع نفس الجرائم، سواء للمجرمين السابقين أو غيرهم من الأشخاص. ويرجع ذلك إلى تقييد وإغلاق إمكانية مرتكبي الجرائم الاقتصادية السابقين لارتكاب نفس الجريمة مرة أخرى. بالإضافة إلى ذلك، سيكون له تأثير في منع وقوع نفس الجريمة في وقت قصير نسبيًا

CHAPTER I

INTRODUCTION

A. Research Background

There are various sanctions or penalties to provide a deterrent effect to criminal offenders who have caused losses to the state. Losses in the financial sector, one of the sanctions given is the limitation of a person's right to serve as a director in a company in the form of a limited liability company. This is clearly stated in Article 93 of Law Number 40 of 2007 concerning Limited Liability Companies which states that those who can be appointed as members of the board of directors are individuals who are legally capable, with the exception that in the 5 years prior to their appointment they have been declared bankrupt, become members of the board of directors or members of the board of commissioners who were found guilty of causing a company to be declared bankrupt, and have been convicted of committing a criminal offense that causes losses to state finances and / or related to the financial sector.[1]

The restriction of rights is in line with Article 35 Section (1) of the Criminal Code regarding the rights of convicted persons that can be revoked by a judge's decision, one of which is the revocation of the right to hold an office in general or a certain position. The verdict is imposed not to eliminate a person's honor, but for

[1] Article 93 of Law Number 40 of 2007 concerning Limited Liability Companies

reasons of propriety such as a form of prevention so that a person does not commit similar criminal acts (recidive). [2]

But on the other hand, in Article 109 of Law of Cipta Kerja there is a new regulation regarding limited liability companies, namely individual limited liability companies that can be established by one founder and one shareholder. Precisely in the Government Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Change, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises. Explained in Article 6 of Government Regulation No. 8 of 2021, there are several provisions for a founder of an individual limited liability company, such as requiring the founder to be an Indonesian citizen by filling out a Statement of Establishment in Indonesian, at least 17 years old and legally capable.

Actually, the requirements for the founder of an individual limited liability company are no different from the requirements for the founder of an ordinary limited liability company. The most significant difference is the special requirements that follow the appointment of directors of the two types of companies. In the establishment arrangement, there is no Section that mentions the revocation of the rights of former convicted economic crimes in establishing an individual limited liability company. This can lead to the conclusion that former convicts of economic crimes are restricted in their rights to hold board of directors, but are allowed to

[2] Article 35 Section (1) of the Criminal Code

establish new individual limited liability companies. In fact, when viewed from the potential losses that can be caused, both types of companies have the same potential in making corporations a forum for economic crimes.[3]

Thus, the essence of the sanction limiting the right to the position of directors is reduced. The efforts to provide a deterrent effect and prevent recidive actions have loopholes due to the lack of specification requirements for the establishment of individual companies. This causes the lack of complete legal norms that can restrict a former convicted of economic crime from carrying out recidivist actions, which in this case is an economic criminal act that can harm state and community finances through limited liability companies.

Based on this background, the focus of this research will be directed at how the urgency of adding certain conditions to the requirements for the establishment of individual companies and how the implications of adding certain conditions to the appointment of directors.

B. Statement of Problem

1. What is the urgency of adding certain requirements for the establishment of an individual limited liability company?
2. What are the implications of adding certain requirements for the establishment of an individual limited liability company for directors?

[3] Article 109 of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Law of Cipta Kerja into Law

C. Objective of Research

1. Knowing the urgency of adding certain requirements for the establishment of an individual limited liability company
2. Knowing the implications of adding certain requirements for the establishment of an individual limited liability company for directors

D. Benefit of Research

1. Theoretical Benefits

   The results of this research can play a role and contribute to the development of science and legal dynamics of limited liability companies, especially in terms of establishment and requirements contained therein. In addition, it is hoped that this research can be a trigger for development of limited liability company legal theories and policies.

2. Practical Benefits

   The results of this study are expected to be useful practically, namely to be more careful in the formulation of a policy so as not to rule out possibilities and loopholes in norms, which can later be exploited by parties who have personal interests. By further understanding and classifying a norm, it will certainly have an impact on the effectiveness of decision making and avoid overlapping norms. In this case, preventive efforts to prevent recidive actions can be implemented optimally.

E. Conceptual Definition

1. Urgency

Urgency is an urgent necessity; Thus, it can be concluded that urgency is a situation that is overwhelmed by an urgent atmosphere, such as when facing a problem that must be resolved immediately. In this case, the study will discuss the urgency of adding conditions to the establishment of an Individual Limited Liability Company. Since the release of the new regulation, namely Government Regulation Number 8 of 2021 and the emergence of new types of companies, there are many loopholes that can be used as tools to satisfy personal interests, one of which is in terms of directors as the main power holders in individual limited liability companies. Thus, in this study will be explained what are the potential problems that can be caused and why it can be an urgency for the addition of individual limited liability company requirements.

2. Addition of Certain Requirements

Changes such as additions or subtractions in settings are common. Law as a legal foundation is a constitution that serves as a legal foundation and basic principles. Thus, in its history there have also been many changes to adjust to the progress and needs of the country. however, it still maintains the values of Pancasila in the constitutional structure.[4]

[4] "Undang-Undang Dasar 1945 (UUD 1945) – Berita dan Informasi," accessed November 27, 2023, https://umsu.ac.id/berita/arti-dari-undang-undang-dasar-1945/.

A particular requirement is a set of conditions or criteria that a person, an organization, or an entity must meet in order to achieve a specific goal, meet a standard, or meet a predefined demand. These requirements may apply in a variety of contexts, including in law, employment, education, or other fields. They are used as guidelines or rules to ensure that an activity or process proceeds according to the prevailing plan or norm, as well as to ensure that the individuals involved meet the necessary conditions. Thus, certain requirements are an important part of regulating and managing various aspects of human life and activities.

The discussion of certain requirements is a very important concept. In this study, certain requirements refer to a number of criteria or conditions that must be met by a person or an entity in order to meet a demand or achieve a certain goal. Specific requirements may vary depending on the context, but are generally designed to ensure that a person or individuals meet the required standards or qualifications.

In a legal context, certain terms may refer to provisions that an individual or company must comply with in order to be legally valid. For example, to set up a company, certain requirements such as business registration and tax payment must be met. These are the steps that must be followed so that the company can operate legally and in accordance with applicable regulations.

The addition of requirements here means the addition of the requirements for the establishment of an Individual Limited Liability Company in Article 6 of

Government Regulation number 8 of 2021. How the addition can be effective to overcome recidive actions by harmonizing the requirements for the appointment of directors in Article 93 of Law Number 40 of 2007 concerning Limited Liability Companies.

3. Recidivist Actions

Recidivist refers to a person's tendency to re-engage in criminal behavior after a previous conviction or legal proceeding. Factors that can lead to recidivism involve personal, social, economic and environmental aspects. Lack of social support, community stigmatization of ex-convicts, and economic limitations can trigger re-engagement in criminal behavior.

Recidivist action occurs when a person commits a criminal act and has been convicted by a judge's decision and has permanent legal force (*in kracht van gewijsde*), but commits the same criminal act again or by the Law equalized. [5] E.Y. Kanter, S.H. and S.R. Sianturi, S.H. present opinions on recidivism in their book entitled *Principles of Criminal Law in Indonesia and Its Application.* In the book it is explained that recidivism is when a person commits a crime and for that a crime is imposed on him, but within a certain period of time, namely: 1) since after the crime is carried out in whole or in part, or; 2) since the crime is

[5] Fathur Rozi and Pembimbing Suyatna, "PENJATUHAN PIDANA TERHADAP RESIDIVIS DALAM PRAKTEK PERADILAN," n.d., 4.

wholly abolished, or; 3) if the obligation to carry out the crime has not expired. Then that same person committed the same crime again.[6]

The Indonesian Criminal Code in this case adheres to *a special recidive system* which means that criminal punishment is only given to certain types of repetition and is carried out within a certain grace period. One particular type of action regulated in the Criminal Code can be seen in Article 486 of the Criminal Code concerning crimes against property and forgery of letters, as well as office crimes.[7] The principle and philosophy of recidive is that criminal punishment for perpetrators of repeated criminal acts caused by previous criminal convictions does not produce results. In this case, it means that the previous conviction has not been able to prevent and correct the perpetrator, which makes them commit the same crime.

Thus, it can be concluded that when the conviction of someone who commits a criminal act has not been able to touch or provide a maximum deterrent effect that causes the criminal to repeat the same criminal act, then that is called recidivism.

[6] Agustin L. Hutabarat S.H, "Seluk Beluk Residivis - Klinik Hukumonline," hukumonline.com, accessed September 25, 2023, https://www.hukumonline.com/klinik/a/seluk-beluk-residivis-lt5291e21f1ae59/.
[7] Rozi and Suyatna, "PENJATUHAN PIDANA TERHADAP RESIDIVIS DALAM PRAKTEK PERADILAN," 4.

F. Method of Research

1. Types of Research

This type of research is normative[8] legal research, that is conducted by examining library materials or secondary data only, or library legal research. In this case, normative research will be used at the level of vertical synchronization, namely whether the legislation applicable to a certain field of life does not contradict each other, when viewed from the point of view of the hierarchy of the legislation. How the urgency of adding certain classifications to the rules for the establishment of limited liability companies as a form of effort to prevent *recidive* actions of perpetrators of economic crimes.

2. Research Approach

The approach used in this study is the Law approach or *statue approach*[9] to examine the laws and regulations related to the legal issues to be studied, namely the study of Government Regulation No. 8 of 2021. Normative research is certainly required to use this approach because the object to be studied is the rule of law that is the focus of research. Not only that, this study also uses an analytical approach so[10] that the resulting legal analysis can be more accurate about the urgency of adding certain requirements to the requirements for the establishment of individual limited liability companies.

---

[8] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: PT Rajagrafindo Persada, 2021), 17.
[9] Jonaedi Efendi and Jhonny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Prenada Media, 2018), 134.
[10] Efendi and Ibrahim, 138.

3. Law Material

This normative legal research uses secondary legal materials. Secondary data has a very broad scope, including personal letters, diaries, books, to official documents issued by the government and so on that contain relevant explanations of the problems discussed.[11]

4. Legal Material Collection Techniques

The collection of legal materials for this research was carried out through inventory procedures and identification of laws and regulations, as well as classification and systematization of legal materials according to the problems in this study. Thus, the techniques for collecting legal materials used are library research and literature study. In addition, the collection of legal materials is also carried out by accessing websites, journals, and articles published online that are related to legal issues in this study.

5. Analysis of Law

The legal material that has been collected will be processed and analyzed by qualitative analysis, namely discussing the legal material that has been obtained by referring to the existing theoretical foundation. Furthermore, it will be described descriptively in order to obtain a picture that can be understood clearly and directed to answer the problems studied.

[11] Soekanto and Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, 24.

G. Previous Research

In this proposal, writer refers to several references from various studies to be the object of previous studies. In this regard, as a support for the discussion so that it can be studied more deeply, writer tries to conduct a literature review on scientific papers that have a relationship with the problem to be discussed. The related research in this case is as follows:

a. Journal article by Febri Jaya entitled *Potensi Konflik Kepentingan dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas dalam Omnibus Law in* 2021. This study aims to discuss the occurrence of conflicts of interest in a limited liability company established by 1 (one) person who also serves as the only member of directors in the company. The research method used is a normative research method with a legal approach or *statue approach* which is carried out by examining laws and other regulations related to discussion.

In the study, it can be concluded that the establishment of an individual limited liability company provides convenience for business actors who want to have a legal entity, but it is limited to the criteria of micro and small businesses. However, considering that the composition of a limited liability company is to separate personal property and shares established, if someone serves as the only director in an individual limited liability company, it can increase the potential for conflicts of interest. In addition,

there is no specific explanation of the rules regarding the obligation of the commissioner as a supervisory organ.[12]

In the research by Febri Jaya, similarities were found with this study, namely the discussion of the novelty of regulations regarding the establishment of limited liability companies in the Law of Cipta Kerja and the potential conflicts that can occur because of this. However, the difference is that this study looks at conflict from the perspective of preventing recidive acts of economic crime.

b. Journal article by Sulasi Rongiyati entitled *Syarat Pendirian dan Tanggung Jawab Pemegang Saham Perseroan Perorangan* in 2023. The research was conducted with the aim of analyzing the formation of individual limited liability companies in the Law of Cipta Kerja and the responsibility of individual limited liability company shareholders for company losses. This type of research is normative juridical with a descriptive research nature. From this research, it can be concluded that the actual arrangement of individual companies in the Law of Cipta Kerja is to make it easier for MSEs to become legal entities. In addition, writer explains the suggestion that with all resolutions to support the ease of doing business for Midsize Enterprise (MSEs), the government needs to pay attention to obstacles, especially so

[12] Febri Jaya, "Potensi Konflik Kepentingan dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas dalam Omnibus Law," *Kosmik Hukum* 21, no. 2 (May 29, 2021): 123, https://doi.org/10.30595/kosmikhukum.v21i2.10310.

that MSEs can carry out their role as legal and legal entities so that legal certainty can be created. Thus, regulations related to individual limited liability companies need to be completed, especially regulations regarding the responsibilities of shareholders or founders of individual limited liability companies.

The similarities that can be seen in this research by Sulasi Rongiyati are in terms of discussion about the test requirements for the establishment of individual limited liability companies through the promulgation of the Law of Cipta Kerja, while the difference exists because this study examines the requirements for the appointment of directors of limited liability companies by looking at the requirements for the establishment of individual limited liability companies in the Law of Cipta Kerja.

c. The next research was conducted by Farida in 2020 with the title *Penempatan Pengulangan Tindak Pidana (Recidive) dalam Kitab Undang-Undang Hukum Pidana Serta Implementasinya oleh Aparat Penegak Hukum*. The research was conducted with the aim of examining what is the basis for the regulation of criminal *acts (recidive*) in the Penal Code and how the implementation of laws and regulations on the repetition of criminal acts (*recidive*) by law enforcement officials at each level. The method used in the study is a qualitative method by analyzing legal materials by examining the systematics of legislation associated with the problems discussed. From this research, it can be concluded that the basis for the emergence of *recidive*

regulation is due to the repetition of criminal acts since the Dutch colonial period. In this case, the application of the provisions for the punishment of *countermeasures can* be effective if the law enforcement officials really work according to the facts and maintain morals and morals as officers.

From the research conducted by Farida, it can be found that the discussion about the repetition of criminal acts (*recidive*). On the other hand, the difference can be seen in the focus of the discussion. Research by Farida focuses on the implementation of recidivist action arrangements on law enforcement officials, while this research focuses on the perspective of economic crimes.

d. The next research by Doni Hendra Lubis published in 2023 is entitled *Urgensi Sanksi Pencabutan Hak Berbisnis Dengan Negara Kepada Pelaku Korupsi dalam Sistem Layanan Pengadaan Secara Elektronik (LPSE)*. The purpose of the study is to find out how the urgency of the birth of additional criminal sanctions in the form of revocation of the right to do business with the state in the crime of government procurement of goods and services and how electronic system procurement services in the procurement of government goods and services itself have the opportunity to reduce the number of state financial losses.

This type of research is normative with the nature of descriptive research analysis. Based on this research, it can be concluded that corruption in the field of government procurement of goods and services results in state

financial losses. The revocation of political rights for perpetrators of abuse of authority has become an obstacle to holding back a position, but on the other hand in Article 2 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, the subject of private law has not been accommodated, so sanctions are needed to revoke the right to do business with the state in the procurement of government goods and services.

The similarity that can be found in research by Doni Hendra Lubis and this research is the discussion of certain rights revocation sanctions. The difference can be seen from the focus of the study, namely research by Doni focuses on sanctions for revocation of the right to do business with the state, while this research examines sanctions related to revocation of the right to occupy certain positions.

e. Research by Sylvia Putri and David Tan published in 2022 under the title *Analisis Yuridis Perseroan Perorangan Ditinjau dari Undang-Undang Cipta Kerja dan Undang-Undang Perseroan Terbatas.* The research aims to determine Individual Companies from a legal point of view and is associated with relevant laws to determine the legal certainty of Individual Companies due to the unconstitutional Law of Cipta Kerja. The research applies the type of normative juridical legal research or *doctrinal research* and the collection of legal materials with *library research* which is then analyzed qualitatively. In addition, the study used a statue *approach* and a comparative approach. Based on this research, it can be concluded that the existence of the Law of

Cipta Kerja raises the existence of a new legal entity, namely an Individual Company which, after analysis, still creates legal loopholes that can result in not achieving the main goal.

The similarity of this research with research by Sylvia and David lies in the discussion of individual companies as new legal entities in the world of limited liability companies. The difference lies in the focus of discussion by Sylvia and David is on legal certainty, while this study focuses on the conditions of establishment.

In order to clarify the similarities and differences between previous research and this research, as well as the novelty offered, it is attached in the form of a table as follows:

Table 1.
Similarities and differences between previous research and this research

No.	Researcher Name	Research Title	Equation	Difference
1	Febri Jaya (Batam International University, 2021)	*Potensi Konflik Kepentingan dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas dalam Omnibus Law*	Discussion of the novelty of regulations regarding the establishment of limited liability companies in the Law of Cipta Kerja and the potential conflicts that can occur because of this	The research focuses on the discussion of potential conflicts of interest, while the research to be examined focuses on conflicts from the perspective of preventing *recidive* actions of economic crime

2	Sulasi Rongiyati (Research Center of the DPR RI Expertise Agency, 2023)	*Syarat Pendirian dan Tanggung Jawab Pemegang Saham Perseroan Perorangan*	Discussion on the test requirements for the establishment of individual limited liability companies through the promulgation of the Law of Cipta Kerja	The study discusses the responsibilities of shareholders in the requirements of establishment, while this study focuses on the requirements for the appointment of directors of limited liability companies by looking at the requirements for the establishment of individual limited liability companies in the Law of Cipta Kerja
3	Farida (University of Muhammadiyah Gresik, 2020)	*Penempatan Pengulangan Tindak Pidana (Recidive) dalam Kitab Undang-Undang Hukum Pidana Serta Implementasinya oleh Aparat Penegak Hukum*	Discussion on the repetition of criminal acts (*recidive*)	The research focuses on the implementation of recidive *action arrangements on* law enforcement officials, while this research focuses on the perspective of economic crime
4	Doni Hendra Lubis (University of Muhammadiyah North Sumatra, 2023)	*Urgensi Sanksi Pencabutan Hak Berbisnis Dengan Negara Kepada*	Discussion of certain disenfranchisement sanctions	Research by Doni focuses on sanctions for revocation of the right to do business with the state, while this

		Pelaku Korupsi dalam Sistem Layanan Pengadaan Secara Elektronik (LPSE)		study examines sanctions related to sanctions for revocation of the right to occupy certain positions
5	Sylvia Putri and David Tan (Batam International University, 2022)	*Analisis Yuridis Perseroan Perorangan Ditinjau dari Undang-Undang Cipta Kerja dan Undang-Undang Perseroan Terbatas*	Discussion about individual companies as new legal entities in the world of limited liability companies	The focus of the research discussion is on legal certainty, while this research focuses on the requirements for establishment

Based on these studies, it states that the regulations regarding the requirements for establishing a limited liability company are incomplete after the promulgation of Law of Cipta Kerja. In addition, there has been no specific study that discusses the urgency of adding certain classifications and how they have implications for the appointment of directors.

H. Structure of Discussion

In order for the discussion of this research to be more focused, then the following is the arrangement of writing systematics:

CHAPTER I Introduction consisting of problem background, problem formulation, research objectives and benefits, conceptual

definition, research methods, and the last is writing systematics.

CHAPTER II In the second chapter of the literature review which contains previous research and theoretical frameworks / foundations. Previous research includes several studies by previous researchers that have similarities and differences with this study. While the theoretical framework describes the theories that are the basis for making conclusions related to this research.

CHAPTER III In the third chapter, the results and discussion will describe the legal materials that have been obtained from the results of collecting legal materials by reading and reviewing literature, which are then classified and analyzed to answer the formulation of existing problems.

CHAPTER IV In the fourth chapter, which is closing, conclusions and recommendations will be presented. Conclusions are prepared based on answers to problem formulations, while recommendations are prepared as input or suggestions to solve problems.

CHAPTER II

LITERATURE REVIEW

1. Individual Limited Liability Company

The term Limited Liability Company consists of two words, namely company and limited. The Company refers to the capital of a Limitet Liability Company consisting of sero-seros or shares. The word limited refers to a holder whose area is limited only to the par value of all shares owned.[13]

In the past, a Limited Liability Company (PT) was named *Naamloze Vennootschap* (*company limited by shares*) and abbreviated as NV. In the book entitled *Company Law: Types of Companies in Indonesia* written by Ramlan, several definitions of Limited Liability Companies are presented.

One of the opinions by Murti Sumarni and Jhon Soeprihatno who said that PT or often also called *Naamloze Vennootschap* is an alliance to run a company that has business capital divided into several shares, where each ally or company takes part as much as one or more shares. Furthermore, both also mentioned that shareholders are limited liability for the company's debts amounting to the deposited capital.[14]

In addition, there is also an opinion by M. Manullang in the same book. It was explained that according to M. Manullang, PT is a partnership to run a company

[13] Mustapa Khamal Rokan and Aida Nur Hasanah, *Hukum Perusahaan: Konsep Hukum Positif dan Islam serta Berbasis Kasus* (Medan: Perdana Publishing, 2020), 128.
[14] Ramlan Ramlan, *Hukum Perusahaan: Jenis-Jenis Perusahaan di Indonesia* (Medan: CV Pustaka Prima, 2019), 160.

that has a working capital divided into several shares, in which each sukutu or persero takes part as much as one or more shares.[15]

As for the definition according to Law Number 40 of 2007 concerning Limited Liability Companies, PT is a legal entity that is a capital agreement, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in this Law, as well as its implementing regulations.[16]

In this regard, after the promulgation of Law Number 6 of 2023 concerning Law of Cipta Kerja, the definition of Limited Liability Company was updated. More details can be seen in the Fifth Section on Limited Liability Companies, in Article 109 which states that a Limited Liability Company is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital entirely divided into shares or individual legal entities that meet the criteria for micro and small enterprises as stipulated in the laws and regulations regarding micro and small enterprises.[17]

Thus, it can be concluded that currently the establishment of a PT can be done with 2 options. The first can be established by two or more people according to the regulations that govern it, namely the PT Law, and can be established by

[15] Ramlan, 160.
[16] Abdul Rasyid Saliman and Adisuputra Adisuputra, *Hukum Bisnis untuk Perusahaan: Teori dan Contoh Kasus*, vol. 8 (Jakarta: Kencana, 2022), 95.
[17] Article 109 of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Law of Cipta Kerja into Law

individuals who will later form an individual company with micro and small business criteria.

2. Theory of Rights Revocation

The types of punishment are regulated in Article 10 of the Criminal Code, namely: Principal Punishment, which consists of Death Penalty; Imprisonment Penalty; Confinement Penalty; Fine Penalty and Exile Penalty and then there are Additional Punishments, namely Revocation of Certain Rights; Forfeiture of Certain Goods and Announcement of Judge's Decision. According to Article 35 Section (1) of the Criminal Code, the rights that can be revoked by the judge with a verdict are:[18]

(a) The right to hold an office in general or a specific office;

(b) The right to hold an office in the Armed Forces / TNI;

(c) The right to vote and to be elected in elections held under general regulations;

(d) The right to be a legal advisor or administrator by court order, the right to be a guardian, supervisory guardian, guardian or supervisory guardian of a child who is not his/her own child.

(e) The right to exercise paternal authority, guardianship or conservatorship over one's own children.

(f) The right to engage in livelihood.

[18] Article 35 Section (1) of the Criminal Code

The deprivation of certain rights is a formulation of additional types of penalties provided that not all rights can be revoked, because the revocation of all rights would be contrary to the Civil Code, especially in Article 3 which reads, "No crime can result in civil death or loss of all civil rights." According to Van Schravendijk, the additional punishment of deprivation of certain rights is actually better in the nature of action than the punishment of not being able to repeat the offense committed. Often this punishment is not perceived by those who are punished as a misery that should be felt as a result of their actions, but sometimes the opposite, such as if a right is revoked such as the right to "enter into armed power."[19]

The revocation of rights does not necessarily stand because of the law, but must go through and with the judge's decision. The revocation period is not indefinite or forever, but can only be temporary. Similarly, not all offices can be decided through judges, but there are certain positions whose revocation can only be done by other rulers. In this regard, in line with its implementation with the utilitarian theory (the purpose of punishment) in which there is a *special preventive theory* aimed at perpetrators of crimes specifically so as not to repeat crimes.

[19] Suyanto, *Pengantar Hukum Pidana* (Yogyakarta: Deepublish, 2018), 89.

CHAPTER III

DISCUSSION OF RESEARCH FINDINGS

A. The Urgency of Adding Requirements for the Establishment of an Individual Limited Liability Company

1. Corporate as a Legal Subject

Corporations, as often large and complex business entities, have a significant role in the global economy. However, along with its power and influence, corporations also become potential containers for economic criminal acts. One of the main reasons why corporations can be a container for economic criminal acts is the complexity of their organizational structure. With every organ and the sheer number of transactions and affiliations, it's hard to keep track of all the activities that take place in it for real. This creates loopholes where criminal acts, such as money laundering or financial fraud, can easily go unnoticed by the competent authorities.

The regulation of corporations as subjects of criminal law can be seen in various kinds of laws and regulations outside the Criminal Code (KUHP). One of them is Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption jo. Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (hereinafter referred to as the Law on the Eradication of Corruption). Article 1 point

3 of the Corruption Eradication Law states that the legal subjects included in the scope of 'everyone' are *natuurlijkpersoon* and *rechtspersoon.*[20]

Similar to people, corporations are believed and predicted to have the potential to commit criminal offenses. A corporation has committed a criminal offense if the criminal offense is committed by the management or employees of the corporation which is still within the scope of its authority and intravires, in the sense that it is still part of the purpose and objectives of the corporation, and the act is carried out for the benefit of the corporation.

The development of the concept of corporation as a legal subject of criminal law is the impact of the large role of corporations in all fields of economy, trade and technology that take place in this country. Such changes are not only changes in business capital that is run individually into a joint business, but also changes in the orientation of values, attitudes and patterns of community behavior in carrying out business activities. Developments and changes in the field of socio-economic activities are marked by deviations in corporate behavior that are detrimental and harmful to the community, such as pollution of natural resource depletion, tax manipulation, money laundering, exploitation of workers, fraud against consumers.

The logical consequence of the corporation's position as a legal entity has an influence on criminal offenses that can be committed against several exceptions. In

[20] Article 1 Number 3 of Law Number 31 of 1999 concerning the Eradication of Corruption

connection with these exceptions, Barda Nawawi Arief stated, although in principle corporations can be held accountable the same as individuals, there are several exceptions, namely:[21]

1. Performed cases that by nature cannot be performed by corporations, for example bigamy, rape, perjury
2. In cases where the only punishment that can be imposed is not possible to be imposed on the corporation, for example imprisonment or death penalty, for example imprisonment or death penalty.

The existence of regulations regarding corporations in the Corruption Eradication Law shows that corporations can also commit crimes which can then be referred to as corporate crimes. The criminal dimension of corporate crime in Indonesia continues to grow along with the development of the national and international economy. This dimension is patterned in forms such as, defrauding stockholders, defrauding the public, defrauding the government, endangering the public welfare, endangering employees, and illegal intervention in the political process. The breadth of the dimensions of corporate crime is also directly proportional to the amount of losses that can be caused when compared to conventional types of crimes such as the types of crimes regulated in the Criminal Code. The losses caused by corporate crime have a broad impact not only in the

[21] Rina Indriati, "TINDAK PIDANA PENCUCIAN UANG DI TINGKAT KORPORASI PERUSAHAAN SEBAGAI PINTU MASUK MELAKUKAN KORUPSI" 2, no. 1 (2022): 81.

economic sector but can also have an impact on the community if not immediately followed up with proper handling and prevention.[22]

Other than that, Law No.31 of 1999 on the Eradication of Corruption as amended by Law No.20 of 2001 on the Amendment to Law No.31 of 1999 on the Eradication of Corruption (Corruption Law), explains that in addition to individuals, corporations are legal subjects that can be charged with corruption cases. However, in practice, the filing of corporations as defendants in corruption crimes is still rare. Corporations are still a debatable legal subject despite their presence in the legislation.

2. Corporate Crime

Bookman, regard Sutherland's definition as too restrictive and suggest that white-collar crime is an illegal act committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid payment or loss of money or property, or to obtain business or personal advantage. Furthermore, scholars have attempted to separate white-collar crime into two types: occupational and corporate. Largely individuals or small groups in connection with their jobs commit occupational crime. It includes embezzling from an emplover, theft of merchandise, income tax evasion, and manipulation of sales, fraud, and violations

[22] Michelle Kristina, "Tipologi Penindakan Kejahatan Korporasi Dalam Korupsi Dana Bantuan Pandemi Covid-19," *JURNAL YUSTIKA: MEDIA HUKUM DAN KEADILAN* 24, no. 01 (September 24, 2021): 2, https://doi.org/10.24123/yustika.v24i01.4610.

in the sale of securities. Corporate crime, on the other hand, is enacted by collectivities or aggregates of discrete individuals.[23]

The benchmarks of the parties who can be charged with corporate criminal liability according to Sutan Remi Sjahdeny related to the system of imposing corporate criminal liability are divided into 4 possibilities, namely: [24]

3. The management of the corporation as the perpetrator of the criminal offense, so therefore the management must bear criminal responsibility
4. The corporation as the perpetrator of a criminal offense, but the management must bear criminal responsibility
5. The corporation as the perpetrator of a criminal offense and the corporation itself must bear criminal responsibility
6. The management and the corporation are both perpetrators of criminal acts, and both must also bear criminal responsibility. criminal responsibility.

Corporate crimes that result in economic harm are pervasive, costly, and take diverse forms. The following sections review both older and recent examples of this form of offense. They were selected to illustrate the full range of victims and offenses that correspond to our conceptualization of crime. An Antitrust Case. Gilbert Geis' case study of the 1961 antitrust convictions for conspiring to fix the

[23] Petter Gottschalk, *White-Collar Crime: Detection, Prevention and Strategy in Business Enterprises* (Universal-Publishers, 2010), 13.
[24] Indriati, "TINDAK PIDANA PENCUCIAN UANG DI TINGKAT KORPORASI PERUSAHAAN SEBAGAI PINTU MASUK MELAKUKAN KORUPSI," 82.

costs of heavy electrical equipment serves as a classic example of economic crime as defined by criminal code. Deliberate violations of the Sherman Antitrust Act by manufacturers of heavy electrical equipment inflated the prices paid by public utility systems who ultimately passed the cost of generating electricity on to consumers.[25]

In comparison, a study in Germany found that the most frequently recurrent forms of white-collar crime, fraud and theft, are associated with comparatively marginal average damages, whereby the rather less common forms of criminality, anti-competition and corruption, exhibit an extremely high potential for damage. Nonethe-less, all forms similarly lead to very high net damages.[26]

Financial crime in Indonesia from 2014-2018 was quite dynamic with a total of 241,367 cases. In 2018, the Polda Metro Jaya legal unit area had the highest number of cases of 5,526 financial crime cases. According to Supriyanto, in his dissertation, the determinants driving financial crime actors were described, including socio-economic factors, which refer to the nature of industry. The description of the nature of industry includes offering convenience, providing low prices and abundant profits in a short time; while affinity frauds, refers to the exploitation of religious issues that can interest the characteristics of Indonesian society.[27]

[25] Michael B. Blankenship, *Understanding Corporate Criminality* (Taylor & Francis, 1995), 35.
[26] Gottschalk, *White-Collar Crime*, 31.
[27] "Criminaloid Telah Berkontribusi Dalam Kejahatan Korporasi – Fakultas Ilmu Sosial dan Ilmu Politik – Universitas Indonesia," accessed December 1, 2023, https://fisip.ui.ac.id/criminaloid-telah-berkontribusi-dalam-kejahatan-korporasi/.

Corporations also often use creative or complex accounting practices to optimize their profits. While not necessarily illegal, this kind of practice can create an environment where criminal acts are economically easier to commit. For example, from manipulation of financial statements to depositing taxes, corruption, and even money laundering can be a nest to reap the maximum profit.

Creative accounting practices often involve the strategic manipulation of financial statements. While some forms of financial engineering are legal, pushing the boundaries to present a rosier financial picture than reality can open the door to fraudulent activities. Exaggerated profits or understated losses can mislead investors and stakeholders, creating a breeding ground for more egregious financial misconduct.

Other than that, complex accounting practices, especially those involving intricate financial networks and subsidiaries, can provide opportunities for money laundering. Illicitly gained funds can be disguised as legitimate profits through convoluted financial transactions, making it challenging for authorities to trace the origin of the funds. The opacity created by creative accounting acts as a cover for money laundering activities.

Money laundering activities within corporations involve the illicit process of concealing the true origins of funds obtained through criminal activities, making them appear legitimate within the company's financial transactions. Corporations may become unwitting or complicit participants in money laundering schemes.

There are common money laundering activities that can occur within corporations: a) placement; b) layering; c) integration.[28]

An example is the corruption case of the East Java PLN Project. This case is one example of the KPK holding a corporation accountable. At that time, KPK indicted former Commissioner of PT Altelindo Karya Mandiri, R.Saleh Abdul malik in the corruption case of the Customer Management Service (CS) project of the State Electricity Company (PLN) of East Java. PT Altelindo Karya Mandiri together with PT Arti Duta Aneka Usaha were partners in the customer management system project of PLN Disjatim Budget administration costs for the 2004-2007 period. As a result of the corruption, the State lost up to Rp175 billion. The Corruption Court Decision No.2/Pid.B/TPK/PN.Jkt.Pst dated May 25, 2010 on behalf of the defendant Saleh Abdul Malik, et al, which is now legally binding, the Panel of Judges granted the demand for restitution against PT Altelindo Karya Mandiri and PT Arti Duta Aneka Usaha, respectively Rp.47.101 billion and Rp.15.052 billion.[29]

Corporate crime can be said to be rooted in white-collar crime *or* corporate crime as white-collar crime. According to Clinard and Yeager, corporate crime as part of *white-collar crime* can be distinguished as follows:[30]

1. The concept of white-collar crime was raised to distinguish a form of crime which includes monetary crimes that are usually not related to crime. White-

[28] "Pelajari Dan Hindari Kejahatan Pencucian Uang .:: SIKAPI ::.," accessed December 1, 2023, https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10470.
[29] Indriati, "TINDAK PIDANA PENCUCIAN UANG DI TINGKAT KORPORASI PERUSAHAAN SEBAGAI PINTU MASUK MELAKUKAN KORUPSI," 82.
[30] Arief Amrullah, *Perkembangan Kejahatan Korporasi* (Prenada Media, 2018), 50.

collar crime is distinguished from lower socio-economic crimes in terms of the structure of the offense and the fact that administrative and civil sanctions are much more often used as punishments than criminal sanctions. Relatively speaking, talking about white-collar crime is a new addition to the understanding of criminological theory. Sutherland defines white-collar crime as iniminal acts committed by middle and upper socio-economic persons and persons related to their position or occupation.

2. Corporate crime is a white-collar crime, but with a special type. Corporate crime is, in fact, an organizational crime that occurs in the context of complex relationships and expectations among boards of directors, executives, and managers on the one hand, and among parent companies, branch companies, and subsidiaries, on the other. The concept of corporate crime is the result of step-by-step development, and it is only an attempt to simplify from the confusion with respect to the vast area of crime called white-collar occupations.

Initially, studies related to white-collar crime focused on crimes committed by individuals in secret, such as embezzlement, and paid little attention to corporate crime which with its complexity not only to corporate crime itself, but also corporate structure.[31]

In corporative structures, decisions and responsibilities are often spread among many individuals. This can create a lack of accountability, where it is difficult

[31] Amrullah, 51.

to determine who is responsible for criminal acts committed by the company. Perpetrators of economic crimes can hide behind layers of complex corporative decisions, making them difficult to track by law. Understanding corporate crime requires expertise that is not usually part of criminologists' observations. However, the main emphasis is on corporate crime as a highly complex organized crime.[32]

In addition to the internal factors of the corporation itself, political influence over corporate power can also increase the vulnerability of corporations to economic criminal acts. In some cases, corporations that have close ties to the government or have substantial political influence may use their power to evade investigation or law enforcement. This creates an environment where illegal acts can continue without significant hindrance.

The policies of the New Order government have made giant corporations increasingly influential in almost all aspects of life, so it is no exaggeration to say that this extraordinary corporate power in practice has a major influence on human life from the womb to the grave. The air we breathe, the water we drink, the food we eat, the clothes we wear, the roads we travel, the vehicles we use, the news we read, the future we plan for, all reek of corporations, both through their products and the pollution they cause.[33]

[32] Amrullah, 51.
[33] Burhanudin Burhanudin, "Tindak Pidana Korupsi Sebagai Kejahatan Korporasi," *JURNAL CITA HUKUM* 1, no. 1 (June 5, 2013): 77, https://doi.org/10.15408/jch.v1i1.2981.

Sutherland's monumental work on white collar criminality (corporate crime) had already been published, but it was not until the late 1960s that research into corporate crime attracted the attention of scientists. In Indonesia, the discussion on corporate crime only broke out in the closing decades of the 20th century.[34]

Although empirical research on corporate crime in Indonesia is still very scarce, news from the mass media illustrates various corporate behaviors that harm and endanger society and life of extraordinary magnitude. The magnitude and scope of corporate crime became more apparent and open with the crisis that hit Indonesia such as in the fields of banking, mining, forestry, land, labor, environment, construction and manipulation in the field of taxation, mark ups on the value of projects that occurred in this republic are extraordinary. From these cases, there is a very prominent indication that the ongoing corporate crime has been mainly the involvement of the bureaucracy (government) both institutionally and by the bureaucratic apparatus. both institutionally and by the bureaucratic apparatus.

The involvement of the bureaucracy is carried out through policies that allow corporations to carry out illegal actions and harm the community. The involvement of the bureaucracy is done through policies that provide opportunities for corporations to carry out illegal actions and harm the community as well as in allowing in the sense of not taking action against corporations that harm the community. Every time we witness corporate actions that violate the law and that

[34] Burhanudin, 77.

harm the people, they are almost always untouched by the law. Even if it comes to the surface, then various ways are done such as denying, clarifying, covering up, lack of evidence or seemingly taking action but there is no continuation.

Commissioner of the Corruption Eradication Commission (KPK) for the 2015-2019 period, Laode M. Syarif, once argued that there are many laws that regulate criminal acts of corruption cases committed by corporations. Research results from the KPK Legal Bureau noted that Indonesia has more than 60 sectoral laws that recognize the criminal responsibility of corporations.[35]

In its development, since the reformation, many cases of corruption that harmed state finances have been tried and sentenced to individuals. Almost all perpetrators of corruption are individuals. To date, you can count on your fingers the cases of corruption that have corporations as defendants. Among the corporate corruption cases that have been revealed to the general public are the corruption case of PT Giri Jaladhi Wana, which was charged with the Anti-Corruption Law and the corruption cases of PT Indosat Tbk and PT Indosat Mega Media.[36]

PT Giri was allegedly the first corporation in the corruption case of the misuse of Banjarmasin's Sentra Antasari Market in 2010. The Banjarmasin High Court imposed a fine of Rp 1.3 billion and additional punishment in the form of temporary closure of PT Giri for six months. At that time, the Head of Pidsus Section

[35] CR-27, "Korupsi Korporasi dan Bentuk Pertanggungjawaban Pidananya," hukumonline.com, accessed December 2, 2023, https://www.hukumonline.com/berita/a/korupsi-korporasi-lt61dcc1ac7d662/.
[36] CR-27.

of Banjarmasin Kejari, Ramadani, stated that the case faced by PT Giri was proven guilty and PT Giri did not file an appeal.

The Anti-Corruption Law does not provide clear provisions on whether a corporation can be considered to have committed a corruption crime. The Anti-Corruption Law in Article 20 Section 2 only provides provisions for corruption crimes committed by corporations if the criminal acts are committed by people either based on work relationships or based on other relationships, acting within the corporation either alone or together, but does not further explain what is meant by 'work relationships' or 'other relationships'.

In criminal law, the Criminal Code has regulated that corporations can commit criminal offenses, but the responsibility for this is imposed on the management. This is explained in Article 35 of Law No.3 of 1982 concerning Compulsory Company Registration. Article 35 Section 1 emphasizes that if the criminal offense as referred to in articles 32, 33 and 34 of this law is committed by a legal entity, criminal prosecution shall be imposed and punishment shall be imposed on the management or power of attorney of the legal entity. Section 2 of the provisions of Section 1 of the article shall be treated equally against a legal entity acting as or holding the power of attorney of a legal entity.[37]

[37] Article 35 of Law Number 3 of 1982 concerning Compulsory Company Registration

Corporate liability in corruption cases can be seen in the formulation of Article 20 of the Anti-Corruption Law which outlines 7 forms of corporate corruption liability:[38]

1. In the event that a criminal act of corruption is committed by or on behalf of a corporation, then if the prosecution or imposition of punishment can be carried out against the corporation and or its management.
2. The criminal act of corruption is committed by a corporation if the criminal act is committed by persons, either by virtue of employment relationship or by virtue of other relationships, acting within the corporation either alone or jointly.
3. In the event that criminal charges are brought against a corporation, the corporation continues to be represented by the management. Fourth, the management representing the corporation as referred to in Section (3) may be represented by another person. Fourth, the judge may order that the management of the corporation appear personally in court and may also order that the management be brought to the court session.
4. In criminal charges brought against a corporation, the summons to appear and the delivery of the summons shall be delivered to the management at the residence of the management or the place where the management has its office

[38] Article 20 of Law Number 31 of 1999 concerning Eradication of Corruption

5. The main punishment that can be imposed on corporations is only a fine, provided that the maximum penalty is increased by one-third.

Corporate crime, with its various forms, not only has an impact on the company itself, but can also harm various parties involved directly or indirectly. One of the groups most affected by corporate crime is corporate employees and employees. Unfair termination, discrimination, or violation of workers' rights can be detrimental to employees' well-being and economic security. Management decisions that are unethical or involve financial fraud can also result in salary cuts or even job loss.

Corporate crime always has a broad impact on society and the environment, and can even disrupt the country's economy. If the penalties and sanctions imposed on the corporation have no meaning, the bad behavior of the corporation by carrying out illegal activities will not change. Corporations will be burdened with more moral and social responsibility to pay attention to the state and safety of their work environment, including residents, culture and the environment.[39]

Another than that, consumers are very vulnerable to corporate crime. In this case, the potential for consumer harm can be viewed from unethical business practices, price manipulation can also harm consumers by draining their finances or providing misleading information. Corporate crime can have far-reaching

[39] Susani Triwahyuningsih, "Perspektif Kejahatan Korporasi dan Pertanggungjawabannya", t.t, 21

consequences that directly impact consumers in various ways. These crimes, which can range from fraud and embezzlement to environmental violations and product safety breaches, can erode consumer trust, financial well-being, and overall quality of life.

Furthermore, the public and other business people. The impact of corporate crime is not limited to any particular individual or group. Corporations that neglect their social responsibilities can also have a negative impact on local communities, reducing employment or disrupting people's daily lives. Corporate crime can create inequality in the business environment. Companies that engage in unethical business practices, such as corruption or price dumping, can harm competitors and other business people. This can undermine the competitiveness and sustainability of a healthy business.

Last and foremost, the government and the state. Corporate crime can also harm regulatory and government authorities responsible for supervising and regulating business activities. The micro and macroeconomic impacts caused cannot be underestimated. For example, if the crime is money laundering, it will divert income from the largest depositors to the lowest depositors of sound investments to risky and low-quality investments. In addition, it can disrupt the course of market

mechanisms, decrease public productivity, decrease state revenue on taxes, and so on.[40]

In relation to this, Steven Box distinguishes corporate crime as follows:[41]

1. Crime for Corporation, crimes committed by corporations to achieve corporate goals in the form of obtaining profits for corporate interests
2. Crime against corporations, such as treasurers stealing corporate money
3. Criminal corporations, when corporations are used as a means to commit crimes. The corporation is deliberately established to expropriate or control for the purpose of committing criminal acts, such as money laundering.

According to Levi, as quoted by Box, that in the UK there have been studies of crimes in the form of fraudulent acts committed by corporations, it has shown how these corporations were established with the intention of using them as a tool to obtain loans with no intention of repaying the loans.

Thus, if a company is considered to have poor performance, then this deteriorating performance results in various bad actions such as corruption, collusion, nepotism, even if it continues to occur sustainably, it can cause a financial crisis in the company because of the minimal number of investors. In fact, of course,

[40] Burhanudin Gesi, "PENCUCIAN UANG (MONEY LAUNDERING) DAN DAMPAKNYA DALAM PEMBANGUNAN EKONOMI," preprint (INA-Rxiv, December 31, 2019), 25, https://doi.org/10.31227/osf.io/c2f45.
[41] Amrullah, *Perkembangan Kejahatan Korporasi*, 229.

investors want a company that has a good work culture, so if it has poor performance and organization, investors will feel reluctant to invest their capital in the company.[42]

In this case, such companies can be said to not optimally apply the principles of Good Corporate Governance (GCG). CGC can be applied in private companies as well as in State-Owned Enterprises (SOE). Both types of companies must continue to strive to provide security and order guarantees and provide the best service to the community. Not only that, this best service is also an effort to prevent the occurrence of various conditions that may harm the company. Despite efforts to provide the best service, each company must still provide standards or regulations related to administrative sanctions to its employees. This is done to safeguard the interests of the company, organize orderly working conditions, and have employees who are fostered and qualified.

Corporate crime to prevent its occurrence, according to Gobert and Punch, the most important thing to prevent corporate crime is self-control and social and moral responsibility to the environment and society where the responsibility comes from the corporation itself and the individuals in it.

As the legal subject of a criminal offence, a corporation committing a crime is considered to be an administrative offence rather than a serious crime. Most people cannot yet view corporate crime as a real crime even though the consequences of

[42] Morinda Salwa O et al., "Penerapan Good Corporate Governance Dalam Hal Keuangan Terhadap Penyelenggaraan BUMN," *Innovative: Journal Of Social Science Research* 3, no. 2 (May 23, 2023): 8, https://doi.org/10.31004/innovative.v3i2.818.

corporate crime are more detrimental and endanger people's lives than criminal crimes.

Losses due to corporate crime are often difficult to quantify because the consequences are multiple, while court penalties or fines often do not reflect the extent of the crime. The company has the power to determine policy through its directors and executives and the company is supposed to be responsible for the consequences of its policies. But companies are not like people, not burdened by various emotions and feelings so that they can easily cover up their bad behavior.[43]

Crimes that occur in a business context are motivated by various causes. Human Error combined with misguided policies and errors in decision making stimulates legal violations. Corporations can be held directly accountable, but corporations cannot be blamed for a crime committed by someone at a low level in the corporate hierarchy.

In this era of globalization, the development of multinational companies is very rapid, even these companies are able to put themselves in a very strategic position to obtain legal protection, so that the judiciary is difficult to file charges against their adverse actions. Every prosecution that occurs for corporate crime is always complicated so that it often cannot be realized. Thus, it can be seen that even

[43] Susani Triwahyuningsih, "Perspektif Kejahatan Korporasi dan Pertanggungjawabannya", t.t, 23

the law is still unreliable to crack down on the problem of corporate crime. An act of crime, occurs because the corporation benefits from the crime it commits

In the other hand, the existence of Article 93 of the Law exists to protect the implementation of Good Corporate Governance of a company. Corporate governance is a process and structure used by the Company's organs to increase the business success and accountability of the business to realize shareholder value in the long term while taking into account the interests of other stakeholders, based on laws and regulations and ethical values. Company organs are GMS, Commissioners, Directors, Capital Owners. Meanwhile, stakeholders are parties who have an interest in SOEs, either directly or indirectly, namely Shareholders / Capital Owners, Commissioners / Supervisory Board, Directors and Employees as well as the Government, Creditors, and other interested parties.

The application of the principles of good corporate governance is also strengthened in the Regulation of the Minister of State for State-Owned Enterprises Number PER-01/MBU/ 2011:[44]

1. Transparency, namely openness in carrying out decision-making processes and openness in disclosing material and relevant information about the company;

[44] "Penerapan Prinsip Good Corporate Governance Pada Perusahaan | Jurnal Ekonomi Bisnis, Manajemen Dan Akuntansi (JEBMA)," December 7, 2021, 101, https://jurnal.itscience.org/index.php/jebma/article/view/982.

2. Accountability, namely the clarity of functions, implementation and accountability of organs so that the management of the company is carried out effectively;
3. Responsibility, namely the suitability of the management of the company to the laws and regulations and the principles of healthy corporation;
4. Independency, namely the condition in which the company is managed professionally without conflict of interest and influence / pressure from any party that is not in accordance with the laws and regulations and sound corporate principles;
5. Fairness, which are fairness and equality in fulfilling the rights of stakeholders that arise based on promises and laws and regulations.

Good corporate governance is a concept that is sustainable and cannot be separated from firm performance. Conducive relationships between these stakeholders are a prerequisite in realizing good company performance, which in turn supports the increase in company value. Corporate governance will provide added value for shareholders in a sustainable manner in the long term, while respecting the interests of other stakeholders, based on applicable laws and norms.[45]

The principle of GCG as a good company control system is expected to be implemented as a monitor of how management works to improve effectiveness and

[45] "Good Corporate Governance (GCG) Dan Pedoman Etika Dalam Perusahaan," accessed December 2, 2023, https://accounting.binus.ac.id/2020/06/30/good-corporate-governance-gcg-dan-pedoman-etika-dalam-perusahaan/.

efficiency, so as to achieve company goals. Thus, the existence of special provisions on the appointment of directors will not protect the credibility, accountability, and capability of the functional order in the main organizational structure of a company.

The essence of the implementation of corporate governance is to improve company performance through supervision or monitoring of management performance and management accountability to other stakeholders, based on the framework of applicable rules and regulations. This can happen because when high business ethics values are applied, consumers or other communities feel satisfied so that on other occasions they are willing to bind business ties with the company, thus the company's business can continue to grow.

3. Law Number 40 of 2007 and Government Regulation Number 8 of 2021

With the release of the new type of company, the Minister of Law and Human Rights as the authorized policy maker issued Regulation of Minister of Law and Human Rights (Permenkumham) Number 21 of 2021 concerning Conditions and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities which finalizes the conditions and procedures for registration of establishment, amendment, and dissolution of legal entities for both types of companies, which in this case are individual limited liability companies and capital partnership limited liability companies. The regulation explains the terms and conditions for the establishment of an individual limited liability company, a capital partnership limited liability company, and the process of

changing the form of an individual limited liability company to a capital partnership limited liability company.

Based on the explanation before, in order to protect all transactions and complex corporate order, the government poured several special criteria for the board of directors and the board of commissioners as individual policymakers who have great responsibility for the direction of a company's policies. Specific requirements for the appointment of both can each be seen in Law Number 40 of 2007 concerning Limited Liability Companiy.

Law Number 40 of 2007 concerning Limited Liability Companies (UU PT) is the legal umbrella governing the establishment and management of limited liability companies in Indonesia. One important aspect regulated in the PT Law is the conditions that must be met by the directors of a limited liability company. Article 93 of the PT Law outlines in detail the requirements that must be possessed by individuals who will serve as members of the board of directors.

In Article 93 of the Law, there are several special criteria in the appointment of a person to the board of directors, namely individuals who are capable of carrying out legal actions, except within 5 (five) years before their appointment have:[46]

1. Declared bankrupt

[46] Article 93 of Law Number 40 of 2007 concerning Limited Liability Companies

2. Being a member of the board of directors or a member of the board of commissioners who is found guilty of causing a company to be declared bankrupt, or
3. Convicted of committing criminal acts that harm state finances and/or related to the financial sector

On the other hand, after the passage of the Law of Cipta Kerja which gave birth to a new type of Limited Liability Company, namely the Individual Limited Liability Company, did not include the same requirements as ordinary PT in its establishment. Based on Article 6 of Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Change, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises, founders are only required to be Indonesian citizens who are at least 17 (seventeen) years old and legally capable. There are no specific requirements such as requirements for the appointment of ordinary PT directors. In fact, the granting of leeway for the establishment of a PT with the permission of one founder, resulted in the founder automatically becoming a director of his company. Coupled with the same powers and obligations possessed by directors of both types of companies, it adds urgency that the appointment requirements must be harmonized in the sense that the requirements for the appointment of directors or the conditions for the

establishment of individual PT include restrictions on rights to former economic crimes that result in losses to the state.[47]

To make it clearer, here is a table of differences between the establishment of an Individual Limited Liability Company and a capital partnership limited liability company:[48]

Table 2.
Differences between the establishment of an Individual Limited Liability Company and a capital partnership limited liability company

	Law Number 40 of 2007	**Government Regulation Number 8 of 2021 (After Law of Cipta Kerja)**	**Risk**
Founder of Company	Individuals Indonesian / foreigners can also be Indonesian / outside Indonesian legal entities, at least 2 founders	Must be an Indonesian citizen, a private person and only 1 founder.	-
Director	At least 1 person	founders as shareholders as well as directors	-
	There is an exception condition for those within 5 years prior to appointment: a. Declared bankrupt; b. Being a member of the Board of Directors or a member of the Board of	There are no specific requirements, only that you must be at least 17 years old and legally competent.	a. Potential recidive action recidation b. Loosening requirements increases potential conflict

[47] Putu Devi Yustisia Utami and Kadek Agus Sudiarawan, "Perseroan Perorangan Pada Usaha Mikro dan Kecil: Kedudukan dan Tanggung Jawab Organ Perseroan" 10, no. 4 (2021): 778.
[48] Legalitas.org, "Legalitas.org - Layanan Legalitas Sejak 2002," accessed December 2, 2023, https://legalitas.org/tulisan/perbedaan-pt-perorangan-dengan-pt-biasa.

	Commissioners who is found guilty of causing a Company to be declared bankrupt; or c. Convicted of a criminal offense that is detrimental to state finances and/or related to the financial sector.		
Commissioner	At least 1 person	No commissioner	Potential conflicts of interest

The writer views this as a setback in the prevention of corporate crime, and does not reflect justice. The reason for the writer's opinion is that corporate crime is a criminal offense that harms various layers of society. Economic crime is actually a crime that harms the people and denies the mandate in the form of power in determining policies. So that former convicts of economic crimes are essentially people who have problems with the mandate carried out in the previous position. It can be likened to someone who has committed dishonest acts on the mandate he received, will tend to do the same thing because of the power he has. In relation to power, Artidjo Alkostar mentioned that the nature of the character of power is basically ambitious to enlarge and expand the influence.

It is based on theory *Utility* in Jeremy Bentham's book, "*An Introduction to the Principles of Morals and Legislation".* Bentham states that here are four

distinguishable sources from which pleasure and pain are in use to flow: considered separately they may be termed the physical, the political, the moral and the religious: and inasmuch as the pleasures and pains belonging to each of them are capable of giving a binding force to any law or rule of conduct, they may all of them termed sanctions. And If at the hands of a particular person or set of persons in the community, who under names correspondent to that of judge, are chosen for the particular purpose of dispensing it, according to the will of the sovereign or supreme ruling power in the state, it may be said to issue from the political sanction.[49]

The view of Utilitarianism was born from legal positivism which is only fixated on the norm which raises a new paradigm that the benefits of norms that bring happiness to the community as the subject of the norm are also important. *The greatest happiness for the greatest number of people* as the paradigm known in legal utilitarianism. According to Jeremy Bentham, he argues that the law must provide benefits for the people it regulates and also happiness, the law should not be made authoritarian. The principle of expediency as the basis of actions that can increase and decrease happiness as an indicator of pleasure and badness in the form of pain.

Bentham also explained that the law must have justice as a bias of happiness for individuals and certainty measured by the number of people who benefit from existing rules, Bentham's view is closer to the psychology of society against existing

[49] Jeremy Bentham, "Principles of Morals and Legislation," n.d., 27.

norms. In principle, Bentham's teaching provides a view to realize happiness, so that a statutory regulation must achieve the following objectives:[50]

1. To provide subsistence
2. To provide abundance
3. To provide security
4. To attain equity

One of the purposes of punishment is as a preventive effort so that the perpetrator does not repeat the same crime. The main goal of preventive theory is to create fear and put an end to crime. That is, by disabling the criminal, to prevent crime. This theory motivates the potential offender out of fear of punishment and prevents the offender from committing any crime. Philosophers such as Bentham, Mill and Austin have supported the theory of resistance in the interests of human nature. Preventive theory claims that this theory is employed as an effective preventive. Crime can be prevented if the perpetrator's misdeeds are stopped.

Three important aspects of preventive punishment exist:[51]

1. Punishment creates fear
2. Prevents the offender from committing any other crime permanently or temporarily

[50] Faradistia Nur Aviva, "Pengaruh Teori Positivisme Hukum Dan Teori Utilitarianisme Hukum Dalam Penegakan Hukum Indonesia," *Jurnal Relasi Publik* 1, no. 4 (November 25, 2023): 116, https://doi.org/10.59581/jrp-widyakarya.v1i4.1837.
[51] Dr Mukul Mondal, "Preventive or Deterrence Theory: A Doctrine Concerning Punishment," 2021, 99.

3. To make the criminal a good citizen of the society through reforms

J. Bentham, as the founder of this theory, states, “General prevention ought to be the chief end of punishment as its real justification. If we could consider an offence, which has been, committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who may have the same motives and opportunities for entering upon it, we perceive that punishment inflicted on the individual becomes a source of security for all. That punishment which considered in itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations, but as an indispensable sacrifice to the common safety” Bentham's theory was based on a hegemonic notion of man, and a person can be prevented from committing a crime if the provision of punishment is applied very quickly and strictly.[52]

Thus, the existence of preventive efforts to overcome the occurrence of the same crime is very necessary. In this case, it is the addition of the requirement for the establishment of an Individual PT to limit the establishment of a company by perpetrators of economic crimes that have harmed the state, namely the revocation

[52] Mondal, 100.

of the right to establish an Individual PT within 5 years after its release from punishment, as stated in Article 93 of the Law.

The deprivation of certain rights is a formulation of additional types of penalties provided that not all rights can be revoked, because the revocation of all rights would be contrary to the Civil Code, especially in Article 3 which reads, "No crime can result in civil death or loss of all civil rights." According to Van Schravendijk, the additional punishment of deprivation of certain rights is actually better in the nature of action than the punishment of not being able to repeat the offense committed. Often this punishment is not perceived by those who are punished as a misery that should be felt as a result of their actions, but sometimes the opposite, such as if a right is revoked such as the right to "enter into armed power."[53]

Elevating corporate governance standards is essential in preventing the recurrence of economic offenses. This includes incorporating provisions that mandate companies to thoroughly assess the background of prospective directors and reject those with a history of financial misconduct. Stricter governance standards create a more resilient framework against individuals seeking to exploit corporate structures for illicit gains.

[53] Suyanto, *Pengantar Hukum Pidana*, 89.

So, it can be concluded that it would be more efficient if the revocation of the right to establish an Individual PT was added as well as an ordinary PT. It is more effective in the sense that the state can reduce opportunities and close the way for individuals or corporations to access the roots of economic crime.

B. Implications of Adding Requirements for Establishment of Individual Limited Liability Companies to the Board of Directors

When discussing about disenfranchisement, it is identical in relation to the regulation on the prevention of criminal acts of corruption. Reflecting on the regulation, conceptually, there are several benefits that can be achieved in eradicating corruption:

1. Deprivation of electability prevents recidivism of perpetrators of corruption crimes;
2. Disenfranchisement can minimize state financial losses;
3. The law operates in accordance with what is promulgated;
4. The disenfranchisement opens up space and opportunities for generations of the nation to contribute to building the country through power at the executive, legislative and judicial levels.[54]

Based on data released by Kompas, most of the perpetrators of corruption handled by the KPK are public officials, this happens because public officials have

[54] Baumi Syaibatul Hamdi, "The Effectiveness of the Law of Disenfranchisement Against Corruptors in the Eradication of Corruption," *Lex Renaissance* 3, no. 2 (2018): 259, https://doi.org/10.20885/JLR.vol3.iss2.art1.

power and authority attached to their positions. According to comparative data on corruption perpetrators handled by the KPK based on profession / position seen from 2018-2020, a total of 496 people were recorded. An example of an actual case related to a public official who committed a corruption crime is the Supreme Court's verdict against Lutfi Hasan Ishaaq as a member of the House of Representatives in the case of corruption in the management of beef import quotas and money laundering with a sentence of 18 years in prison and a fine of IDR 1 billion in lieu of 6 months imprisonment plus revocation of political rights to be elected in public office.[55]

In the implementation of the 2019 simultaneous elections, there were several cases of criminal violations committed by legislative candidates. According to data from Bawaslu of the Republic of Indonesia, there were more than two thousand cases of criminal violations that occurred at the 2019 Election stage. Of this data, there are 380 (three hundred and eighty) cases that have been given permanent decisions both at the District Court and High Court levels. Rieke Diah Pitalolo stated that of the 380 (three hundred and eighty) cases, 95 (ninety-five) were legislative candidates who were proven to have committed election crimes. A total of 65 (sixty five) of them were given administrative sanctions in the form of canceled candidate.[56]

From the aspect of Good Governance, the rule of law is one of the main conditions for the realization of good governance, meaning that all aspects and

[55] Dennis Efraim Purba, "IMPLIKASI PENCABUTAN HAK POLITIK SEBAGAI PIDANA TAMBAHAN BAGI TERPIDANA KORUPSI" 4 (2021): 244.
[56] Irfan Alfi, "Implikasi Sanksi Pidana Terhadap Calon Anggota Legislatif Ditinjau Dari Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum," *Awasia: Jurnal Pemilu Dan Demokrasi* 1, no. 1 (June 9, 2021): 50.

governance of the life of the nation and state are subject to and obedient to the rule of law which becomes "guidance" where the people fulfill the provisions made by the government acting on behalf of the people, who violate these provisions can be sanctioned or punished. Without coercive power, the government will certainly not be able to carry out its duties and public peace and order will be difficult to create.

The revocation of political rights is considered appropriate as an additional punishment for perpetrators who occupy public positions, especially those who come from the people's choice (elected officials), which means that they have denied the people's trust. This is intended to anticipate corruptors who still want to become public officials elected through general elections in order to protect the general public from further acts of corruption. Thus, the existence of political rights is one of the efforts to realize one of the objectives of the State of Indonesia as stated in the fourth Section of the preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), namely to protect the entire Indonesian nation and all Indonesian.

Supreme Court Decision Number 537K/Pid.Sus/2014 in one of its verdicts imposed additional punishment in the form of revocation of political rights, namely the right to elect and be elected in public office. The imposition of additional punishment given to Djoko Susilo in Supreme Court Decision Number 537K/Pid.Sus/2014 because he was proven jointly and combined several crimes.Violating Article 2 Section (1) jo. Article 18 of Law Number 31 Year 1999 on the Eradication of Corruption as amended by Law Number 20 Year 2001 on the

Amendment to Law Number 31 Year 1999 on the Eradication of Corruption jo Article 55 Section (1) to 1 jo Article 65 Section (1) of the Criminal Code.[57]

The criminal act of corruption is a violation of social rights and economic rights of the community, so that corruption can no longer be classified as an ordinary crime but has become an extraordinary crime. Therefore, even efforts to overcome it can no longer be done normally, but are prosecuted in extraordinary ways (extra ordinary enforcement). According to that, actions that can have a deterrent effect on the perpetrators of corruption are needed.

Meanwhile, Roeslan Saleh argues that the inclusion of revocation of certain rights in the Criminal Code (KUHP) is because the legislator considers the additional punishment to be appropriate. Appropriateness is not because they want to eliminate someone's honor, but for other reasons such as special prevention. For example, the revocation of a person's right to be a doctor due to malpractice. The purpose of the revocation of rights is so that similar actions are no longer carried out by the perpetrator of the crime or often known as recidivism.[58]

The threat of criminal sanctions is not intended to retaliate but to achieve certain goals such as detterence so that the offense does not occur. For example, the idea of providing additional sanctions in the form of revocation of voting and election rights is expected to have a stronger deterrence impact to create an

[57] Dina Fajar Indah, Haris Retno Susmiyati, and Rini Apriyani, "Pencabutan Hak Politik Pelaku Tindak Pidana Korupsi dalam Perspektif Hak Asasi Manusia," *Risalah Hukum*, December 30, 2020, 73, https://doi.org/10.30872/risalah.v16i2.285.
[58] Dina Fajar Indah, Haris Retno Susmiyati, and Rini Apriyani, 73.

awareness for the perpetrators of violations about the severity of responsibility for the mistakes that have been committed.

While the punitive aspect of criminal sanctions exists, the primary emphasis is on preventing future criminal behavior and maintaining societal order. This aligns with the broader goals of the criminal justice system, which include deterrence, rehabilitation, and protection of the public. It is essential to strike a balance between punitive measures and efforts to address the root causes of criminal behavior, promoting a more comprehensive and effective approach to crime prevention and control.

Professor Sanya Dhamasakti, an expert on Thai law and politics, stated that the existence of political disenfranchisement as an additional crime is an effective step in eradicating the criminal acts of corruption that have been rife in Thai government institutions since the dictatorship of the military regime. Thus, it does not rule out the possibility that the addition of requirements for the position of directors as a barrier for perpetrators of economic crimes can be an effective step considering that economic criminal crimes within the scope of corporations are not much different in motives and patterns from other economic criminal crimes, such as corruption, money laundering, and so on.[59]

Handling corruption crimes from the perspective of criminal politics should no longer focus on penal policy alone, but through non-penal policy which actually

[59] Purba, "IMPLIKASI PENCABUTAN HAK POLITIK SEBAGAI PIDANA TAMBAHAN BAGI TERPIDANA KORUPSI," 248.

has a strategic role. This is because the non-penal policy is more like crime prevention. In essence, it cannot be denied that repressive measures also contain preventive measures, but it must be recognized that actual prevention is the best form of crime prevention.[60]

The same case when looking at the revocation of rights from the corporate side, especially in the discussion of the appointment of directors in this study. If we look at the deterrent effect caused by the revocation of office rights for former perpetrators of corruption crimes, it is possible that the level of success will be equally effective if applied to restrictions on rights for directorships. This is because there are several elements that are the same between the two, namely in terms of position, crime, and opportunity.

Corruption in the realm of corporate crime is not confined to a singular act but encompasses a spectrum of illicit practices that prioritize personal gain over ethical considerations. One prevalent form of corruption is bribery, where corporate entities engage in the exchange of money or favors to influence decision-makers and secure favorable business outcomes. This undermines fair competition and fosters an environment where success is achieved through backdoor deals rather than merit.

Moreover, embezzlement and financial fraud represent another facet of corporate corruption, where individuals within organizations manipulate financial systems for personal enrichment. Skewing financial records, siphoning funds, or

[60] Purba, 249.

engaging in deceptive accounting practices are all manifestations of corruption that compromise the financial integrity of companies, leaving investors, employees, and consumers as unsuspecting victims of these illicit schemes.

The provision of restrictions on the requirements for the appointment of directors is not only applied in Indonesia. This turned out to be practiced also in one of the neighboring countries in ASEAN, namely Malaysia as an effort to provide a deterrent effect for those who are proven to have committed economic crimes that are detrimental to the country. It can be said that special requirements exist as an effort to prevent and eradicate economic crime within the corporate sphere.

In Malaysia, this mechanism is explained in Companies Act 2016 about *Persons Disqualified from Being a Director,* precisely in Article 198 Section (1) letter (c) which states that, "A person shall not hold office as a director of a company or whether directly or indirectly be concerned with or takes part in the management of a company, if the person— (c) *has been convicted of an offence involving bribery, fraud or dishonesty*"[61]

Based on Malaysia's Companies Act 2016, the duty to act in good faith requires directors to discharge their duties honestly and with integrity. The directors must act honestly in what they believe to be in the best interests of the company and they must not use the powers conferred for any collateral purpose. In other words, the directors must exercise their powers in good faith, in accordance with what they

[61] Article 198 Section (1) Malaysia Companies Act 2016

consider and not what a court might consider to be in the interests of the company, and not for the purpose of any security. Section 213 of the Companies Act 2016 requires that a director must act honestly and use reasonable diligence in the discharge of his duties. Upon their appointment, the directors are fiduciaries and must therefore show the utmost good faith towards the company in dealing with the company or on its behalf.

As researched by Chin-Hong Puah that the failure or inadequacy of an organization that controls a company can be a major factor that encourages a person to commit corporate crime, because the right to control provides an opportunity for the person to do so.[62]

It was observed that self-disciplinary measures resulted in an increase in re-offense behavior, while administrative measures significantly reduced recidivism.[63] Thus, efforts to establish high standardization for the position of the board of directors can significantly contribute to the achievement of clean organizational patterns and performance. This is because the board of directors is the holder of the highest responsibility in the decision-making of an Individual limited liability company. In addition, the achievement and pattern of clean performance will realize:

1. Transparency and accountability

[62] Puah Ch, "Factors Stimulating Corporate Crime in Malaysia," n.d., 7.
[63] Yang Wang, John K. Ashton, and Aziz Jaafar, "Financial Statement Fraud, Recidivism and Punishment," *Emerging Markets Review* 56 (September 2023): 10, https://doi.org/10.1016/j.ememar.2023.101033.

High standards can realize directors with a high level of transparency and maintain accountability in decision making.

2. Prevention of conflicts of interest

   A clear position of the board of directors with high standards and ethics helps prevent conflicts of interest. This is important given that decisions made by the board of directors must truly reflect the interests of the company.

3. Business sustainability

   A clean board of directors can help ensure that business strategies and long-term decisions can support the sustainability of the company.

4. Fulfillment of laws and regulations

   Directors who comply with legal and regulatory requirements are needed to reduce legal risks and create a reliable and respected business environment.

5. Reputation and investment opportunities

   A clean board of directors will increase trust and increase the interest of domestic and foreign investors. This can certainly help improve the company's access to necessary capital, as well as help increase the country's investment figures.

If special requirements for the appointment of directors to individual PT are added and become the same as ordinary PT, it also has the effect of preventing the same crime from occurring in a relatively short time. Implementing stringent director

appointment standards acts as a deterrent to potential wrongdoers. When individuals know that their qualifications and conduct are subject to rigorous scrutiny, they are less likely to engage in criminal activities within the company. This preventive effect can significantly contribute to reducing the occurrence of financial fraud, embezzlement, and other white-collar crimes.

Financial fraud, embezzlement, and other white-collar crimes pose significant threats to the stability and integrity of businesses. The implementation of preventive measures, such as uniform director appointment requirements for individual Private Limited Companies (PTs) and ordinary PTs, can play a pivotal role in reducing the occurrence of these crimes within corporate settings.

White-collar criminals are individuals who are wealthy, highly educated, and socially connected, and they are typically employed by and in legitimate organization. They are persons of respectability and high social status who commit crime in the course of their occupation. Therefore, special requirements are needed as a form of restriction.[64]

Treating individual PTs and ordinary PTs with the same set of director appointment requirements promotes uniformity in corporate governance practices. This not only ensures a level playing field but also establishes a clear framework for ethical conduct and responsible leadership across different types of companies. A uniform approach enhances transparency and accountability. Ensuring that both

[64] Gottschalk, *White-Collar Crime*, 14.

individual PTs and ordinary PTs adhere to the same set of director appointment requirements creates a standardized approach to corporate governance. This uniformity sets the stage for a more cohesive and regulated business environment.

Then, in order to prevent economic offenders from rejoining boards, there must be a comprehensive and rigorous system of background checks in place. Companies and regulatory bodies should collaborate to establish thorough vetting procedures that scrutinize the professional history and ethical conduct of potential directors. This includes investigating any prior involvement in financial crimes.

Only fairly recently have sociologists become sensitive to the idea that at least some criminal behavior usefully may be viewed not as personal deviance, but rather as a predictable product of the individual's membership in or contact with certain organizational systems, typically industries or professions. Such systems are said to be criminogenic (citation omitted, emphasis in original) in the sense that features of their internal structures economic, legal, organizational and normative play a role in generating criminal activity within the system.[65]

It is inconceivable for a former economic offender to return to the board of directors by establishing a new individual company and repeating the same crime. The level of losses generated will increase and the impact will have an impact on the country and society. The repercussions of such recidivism extend far beyond the

[65] Sally S. Simpson and David Weisburd, *The Criminology of White-Collar Crime* (Springer Science & Business Media, 2008), 19.

immediate financial losses incurred by companies; they have the potential to detrimentally impact the economic stability of a country and the fabric of its society.

Erase one hundred percent of the possibility of a person committing a recidivist act is not easy. However, as an analogy, if there are no restrictions on the right to occupy the board of directors within 5 years after being charged with an economic crime, then the possibility of recidivism will accelerate. The implication is different if restrictions are applied, then there will be no recidivism in a relatively short time, so that it can reduce the number of losses in terms of material and immaterial.

When a former economic offender returns to the board of directors, there is a substantial risk of repeating fraudulent practices that lead to financial losses. The magnitude of these losses can be staggering, affecting not only the specific company but also influencing investors' confidence in the broader economic landscape. Recurring financial crimes contribute to an atmosphere of uncertainty and erode trust in financial institutions.

The recurrence of economic offenses perpetrated by individuals who have previously been convicted and are allowed to rejoin boards undermines investor confidence. Investors, both domestic and international, may become wary of engaging with businesses in a climate where there is insufficient protection against recidivism. This erosion of confidence can lead to capital flight and a diminished attractiveness for foreign investments.

The repercussions of financial crimes extend beyond corporate realms to the broader societal fabric. When economic offenders exploit their positions on boards, the subsequent financial fallout can lead to downsizing, layoffs, and even bankruptcy for companies. The ensuing impact on employment levels jeopardizes the livelihoods of countless individuals, contributing to social unrest and economic instability.

In addition, large amounts of losses can also be avoided. Although the amount of capital of an Individual PT is different from an ordinary PT, a loss is still a loss. The amount of capital of an individual PT follows the criteria for micro and small business capital, which is at most 1 billion rupiah excluding land and buildings for micro businesses and 1 – 5 billion excluding land and buildings for small businesses. With the conclusion that the working capital should not exceed 5 billion rupiah.[66]

A big or small losses are still losses, both material and immaterial. The state has an obligation to protect the people from the potential harm that can be caused. From the material side, employees, business people involved, to the government can anticipate economic losses that can be felt directly. Meanwhile, from the immaterial side, the state can protect people's employment opportunities, the sustainability of the corporate world in Indonesia, to maintain the stability of economic development.

[66] Article 35 of Government Regulation Number 7 of 2021 concerning the Ease, Protection and Empowerment of Cooperatives and Micro, Small and Medium Enterprises.

One notable advantage of aligning director appointment requirements is the swift adaptability and implementation of the new standards. Since the regulatory framework is already in place for ordinary PTs, extending these requirements to individual PTs can be done more efficiently. This quick implementation reduces the window of opportunity for potential wrongdoers to exploit any existing gaps in the system.

CHAPTER IV

CLOSING

A. Conclusion

The results of the research on the urgency of adding requirements for the establishment of individual limited liability companies as an effort to prevent recidivist actions of directors (study of Government Regulation Number 8 of 2021) can be concluded as follows:

1. Some of the problems caused in the corporate world such as the vulnerability of corporations as a forum for economic crimes, the impact of the problems caused, to the realization of a good corporate environment with the principle of *Good Corporate Government*, become an urgency for the government to protect all transactions and corporate order. A balanced regulation of Law Number 40 of 2007 and Government Regulation Number 8 of 2021, regulatory harmony will be created and Government Regulation Number 8 of 2021 can also be a maximum legal umbrella as the existence of Law Number 40 of 2007.
2. If Government Regulation Number 8 of 2021 and the Law Number 40 of 2007 are harmonized in the terms of the board of directors, it will certainly have a deterrent effect not only for perpetrators of economic crimes, but also as a preventive effort to prevent the same crime from occurring, whether in former crimes or other people. This is due to restrictions and closed access

for former economic convicts to commit the same crime again. In addition, it also has an impact on preventing the same crime from occurring in a relatively short time. This can certainly reduce the potential losses that can be caused.

Finally, it can avoid large-scale losses from the community and government side, such as protecting job opportunities, the sustainability of the company world in Indonesia, to maintaining the stability of economic development with money that runs and rotates regularly.

B. Suggestion

1. In relation to the revocation of the right to become a director as previously explained, one of the objectives of the punishment is in addition to providing a deterrent effect also to prevent and have an impact in the future. Therefore, the revocation of the right to occupy the position of directors has become a necessity to be included in Government Regulation Number 8 of 2021 as a sanction or standard for perpetrators of economic crimes in the context of eradicating corporate crimes, so that the eradication of corporate crimes using existing legal products can run more effectively. It is suggested that in order to minimize corporate criminal activities, implementing a good and effective corporate governance structure will be indispensable and beneficial. Preventive action must be taken before corporate crime occurs. In addition, in order to combat corporate crime, management, employees, society and regulators must work together.

2. For future research, it is hoped that it will complement this research if the regulations related to the establishment of an Individual Limited Liability Company are updated, as well as how the real impact will be in the field, especially when viewed in terms of implementation so that it can be examined again with a different perspective, comprehensively and in depth.

BIBLIOGRAPHY

Law Material

Criminal Code

Law Number 3 of 1982 concerning Compulsory Company Registration

Law Number 31 of 1999 concerning Eradication of Corruption

Law Number 40 of 2007 concerning Limited Liability Company

Malaysia Companies Act 2016

Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Law of Cipta Kerja into Law

Government Regulation Number 7 of 2021 concerning the Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises

Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Change, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises

Regulation of Minister of Law and Human Rights Number 21 of 2021 concerning Conditions and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities

Book

Amrullah, Arief. *Perkembangan Kejahatan Korporasi*. Prenada Media, 2018.

Bentham, Jeremy. “Principles of Morals and Legislation,” n.d.

Blankenship, Michael B. *Understanding Corporate Criminality*. Taylor & Francis, 1995.

Efendi, Jonaedi, and Jhonny Ibrahim. *Metode Penelitian Hukum: Normatif dan Empiris*. Prenada Media, 2018.

Gottschalk, Petter. *White-Collar Crime: Detection, Prevention and Strategy in Business Enterprises*. Universal-Publishers, 2010.

Mondal, Dr Mukul. “Preventive or Deterrence Theory: A Doctrine Concerning Punishment,” 2021.

Ramlan, Ramlan. *Hukum Perusahaan: Jenis-Jenis Perusahaan di Indonesia*. Medan: CV Pustaka Prima, 2019.

Rokan, Mustapa Khamal, and Aida Nur Hasanah. *Hukum Perusahaan: Konsep Hukum Positif dan Islam serta Berbasis Kasus*. Medan: Perdana Publishing, 2020.

Saliman, Abdul Rasyid, and Adisuputra Adisuputra. *Hukum Bisnis untuk Perusahaan: Teori dan Contoh Kasus*. Vol. 8. Jakarta: Kencana, 2022.

Simpson, Sally S., and David Weisburd. *The Criminology of White-Collar Crime*. Springer Science & Business Media, 2008.

Soekanto, Soerjono, and Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Depok: PT Rajagrafindo Persada, 2021.

Suardita, I Ketut. “Pengenalan Bahan Hukum (PBH) Hukum Administrasi Negara Bagi Mahasiswa Semester 1 Fakultas Hukum Universitas Udayana,” 2017.

Suyanto. *Pengantar Hukum Pidana*. Yogyakarta: Deepublish, 2018.

Article Journal

Alfi, Irfan. “Implikasi Sanksi Pidana Terhadap Calon Anggota Legislatif Ditinjau Dari Undang-Undang Nomor 7 Tahun 2017 Tentang Pemilihan Umum.” *Awasia: Jurnal Pemilu Dan Demokrasi* 1, no. 1 (June 9, 2021): 37–53.

Aviva, Faradistia Nur. “Pengaruh Teori Positivisme Hukum Dan Teori Utilitarianisme Hukum Dalam Penegakan Hukum Indonesia.” *Jurnal Relasi Publik* 1, no. 4 (November 25, 2023): 111–23. https://doi.org/10.59581/jrp-widyakarya.v1i4.1837.

Burhanudin, Burhanudin. “Tindak Pidana Korupsi Sebagai Kejahatan Korporasi.” *JURNAL CITA HUKUM* 1, no. 1 (June 5, 2013). https://doi.org/10.15408/jch.v1i1.2981.

Ch, Puah. “Factors Stimulating Corporate Crime in Malaysia,” n.d.

Dina Fajar Indah, Haris Retno Susmiyati, and Rini Apriyani. “Pencabutan Hak Politik Pelaku Tindak Pidana Korupsi dalam Perspektif Hak Asasi Manusia.” *Risalah Hukum*, December 30, 2020, 68–82. https://doi.org/10.30872/risalah.v16i2.285.

Gesi, Burhanudin. “PENCUCIAN UANG (MONEY LAUNDERING) DAN DAMPAKNYA DALAM PEMBANGUNAN EKONOMI.” Preprint. INA-Rxiv, December 31, 2019. https://doi.org/10.31227/osf.io/c2f45.

Hamdi, Baumi Syaibatul. “Efektivitas Hukum Pencabutan Hak Dipilih Terhadap Koruptor Dalam Pemberantasan Korupsi.” *Lex Renaissance* 3, no. 2 (2018): 245–62. https://doi.org/10.20885/JLR.vol3.iss2.art1.

Indriati, Rina. “TINDAK PIDANA PENCUCIAN UANG DI TINGKAT KORPORASI PERUSAHAAN SEBAGAI PINTU MASUK MELAKUKAN KORUPSI” 2, no. 1 (2022).

Jaya, Febri. “Potensi Konflik Kepentingan dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas dalam Omnibus Law.” *Kosmik Hukum* 21, no. 2 (May 29, 2021): 48. https://doi.org/10.30595/kosmikhukum.v21i2.10310.

Kristina, Michelle. “Tipologi Penindakan Kejahatan Korporasi Dalam Korupsi Dana Bantuan Pandemi Covid-19.” *JURNAL YUSTIKA: MEDIA HUKUM DAN KEADILAN* 24, no. 01 (September 24, 2021): 1–13. https://doi.org/10.24123/yustika.v24i01.4610.

O, Morinda Salwa, Cindy Aprillia, Pramesti Aruming P, and Nasywa Zahirah. “Penerapan Good Corporate Governance Dalam Hal Keuangan Terhadap Penyelenggaraan BUMN.” *Innovative: Journal Of Social Science Research* 3, no. 2 (May 23, 2023): 4232–45. https://doi.org/10.31004/innovative.v3i2.818.

Purba, Dennis Efraim. “IMPLIKASI PENCABUTAN HAK POLITIK SEBAGAI PIDANA TAMBAHAN BAGI TERPIDANA KORUPSI” 4 (2021).

Rozi, Fathur, and Pembimbing Suyatna. “PENJATUHAN PIDANA TERHADAP RESIDIVIS DALAM PRAKTEK PERADILAN,” n.d.

Triwahyuningsih, Susani. “Perspektif Kejahatan Korporasi dan Pertanggungjawabannya” (2013)

Utami, Putu Devi Yustisia, and Kadek Agus Sudiarawan. “Perseroan Perorangan Pada Usaha Mikro dan Kecil: Kedudukan dan Tanggung Jawab Organ Perseroan” 10, no. 4 (2021).

Wang, Yang, John K. Ashton, and Aziz Jaafar. “Financial Statement Fraud, Recidivism and Punishment.” *Emerging Markets Review* 56 (September 2023): 101033. https://doi.org/10.1016/j.ememar.2023.101033.

Another Literarure

.

“Good Corporate Governance (GCG) Dan Pedoman Etika Dalam Perusahaan.” Accessed December 2, 2023. https://accounting.binus.ac.id/2020/06/30/good-corporate-governance-gcg-dan-pedoman-etika-dalam-perusahaan/.

“Pelajari Dan Hindari Kejahatan Pencucian Uang .:: SIKAPI ::.” Accessed December 1, 2023. https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/Article/10470.

S.H, Agustin L. Hutabarat. “Seluk Beluk Residivis - Klinik Hukumonline.” hukumonline.com. Accessed September 25, 2023. https://www.hukumonline.com/klinik/a/seluk-beluk-residivis-lt5291e21f1ae59/.

“Undang-Undang Dasar 1945 (UUD 1945) – Berita dan Informasi.” Accessed November 27, 2023. https://umsu.ac.id/berita/arti-dari-undang-undang-dasar-1945/.

CURRICULUM VITAE

Nama : Akhza Fadhila Ishdiqana

Place and Date of Birth : Mataram, 13 June 2002

Gender : Female

Religion : Islam

Original Address : Jl. Kali Brantas No. 5, Karang Sukun, Mataram

Phone Number (Whatsapp) : 08983141619

E-Mail : akhzafadhilaa@gmail.com

Social Media (Instagram) : @akhzafadhila

Education

Education	School Name	Place/City	Year of Graduation
SD	SDN 1 Pengadang	Praya	2012
SD	SDIT Anak Sholeh Mataram	Mataram	2014
SMP	MTsN 1 Mataram	Mataram	2017
SMA	MAN 2 Mataram	Mataram	2020
S1	UIN Maulana Malik Ibrahim Malang	Malang	2024

Organizational Experience

No.	Organization Name	Department	Years of Service
1	LSO ForKES UIN Malang	Secretary 1	2022 – 2023
2	GenBI Malang	Editorial Bureau	2022 - 2023
3	Moot Court LASMOUT Faculty of Sharia UIN Malang	Training and Discussion Bureau	2023 - present

Volunteer

1. Bina Bersama “Penyalahgunaan Internet pada Anak” 2022

Awards

1. Bank Indonesia Scholarship Awardee 2022
2. 3rd Winner of National Business Plan HIMAESY Yudartha Pasuruan 2022
3. Student Awards of Sharia Economic Law Sharia Faculty UIN Malang 2022
4. Speaker on Srikandi Podcast "Financial Management" 2023