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Legal Contradictions Regarding the Requirements for Establishing a Limited Liability Company Under ACT No. 40 Of 2007 on Limited Liability Companies and Act No. 11 of 2020 on Job Creation and Their Implications for the Establishment of Microfinance Institutions

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Abstract

This study examines the legal antinomy that arises between Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies (Undang-Undang Perseroan Terbatas, UUPT), which requires the establishment of a company by a minimum of two people, and Article 153A paragraph (1) of Law Number 11 of 2020 concerning Job Creation (Undang-Undang Cipta Kerja, UUCK), which allows the establishment of an Individual Company by one person for micro and small businesses. Furthermore, this study analyses the implications of the conflict between these norms and the provisions of Article 2 paragraph (1) of the Financial Services Authority Regulation Number 41 of 2024 concerning Microfinance Institutions (Peraturan Otoritas Jasa Keuangan Lembaga Keuangan Mikro, POJK LKM), which regulates the establishment of a legal entity of Microfinance Institutions (MFIs) in the form of limited liability companies (Perseroan Terbatas, PT). This study uses a normative juridical method with a legislative approach and a conceptual approach. The results of the study show that there is a partial antinomy between the norms of the UUPT and the UUCK, where the provisions of the UUCK as lex posterior and lex specialis apply to the establishment of a company by micro and small business actors. With regard to MFIs, the provisions of POJK Number 41 of 2024 do open opportunities for MFIs to form PTs, but the application of Article 153A to MFIs requires the fulfilment of the criteria for micro and small businesses as stipulated in laws and regulations, so that not all MFIs in the form of PTs can be automatically established by one person.

INTRODUCTION

The Indonesian national legal system recognizes the legal principle of lex posterior derogat legi priori and the principle of lex specialis derogat legi generali as instruments for resolving norm conflicts. However, along with the increasingly complex dynamics of the formation of laws and regulations, conflicts between norms—or what are commonly called legal antinomies—are inevitable. One of the significant legal antinomies in Indonesian corporate law is the conflict between the provisions for the establishment of a limited liability company in Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter

referred to as UUPT) and Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as UUCK).

Article 7 paragraph (1) of the UUPT expressly stipulates that "The Company is established by 2 (two) or more persons with a notary deed made in Indonesian." This provision reflects the contractual principle in the formation of the company's legal entity, where the existence of an agreement between two or more parties is an absolute requirement. This principle is in line with the nature of a limited liability company as a capital partnership formed through the agreement of the founders.

However, in the framework of regulatory reform through the UUCK, which uses the omnibus law method, Article 153A paragraph (1) of the UUCK provides a breakthrough by stipulating that "Companies that meet the criteria for Micro and Small Enterprises can be established by 1 (one) person." This provision gave birth to a new concept known as an Individual Company, a form of legal entity that is substantially different from a conventional limited liability company because it does not require an agreement between two parties.

The conflict of these norms is increasingly relevant to study when associated with the financial services sector, especially regarding Microfinance Institutions (MFIs). Article 2 paragraph (1) of the Financial Services Authority Regulation Number 41 of 2024 concerning Microfinance Institutions (hereinafter referred to as POJK LKM) stipulates that MFIs can be established in the form of a limited liability company. The question that then arises is: can an MFI in the form of a limited liability company be established by one person as allowed by Article 153A paragraph (1) of the UUCK?

The novelty of this research lies in four main aspects. First, this study provides a comprehensive analysis of legal antinomy across four layers of norms: UUPT (2007), UUCK (2020), P2SK Law (2023), and POJK No. 41/2024 (2024), demonstrating how each new layer adds complexity to the resolution of the initial conflict between Article 7(1) UUPT and Article 153A UUCK. Second, this research introduces a de lege ferenda tiered governance framework for MFIs in the form of Individual Companies, distinguishing between sub-district/village level operations (where single-founder permits may be appropriate) and sub-district/district/city level operations (where multi-founder requirements should be maintained). This differentiated approach has not been proposed in previous literature. Third, this study applies comparative jurisprudence from the Netherlands, the United Kingdom, and India to strengthen the normative argument for proportionate regulation based on operational scope and risk profile. Fourth, this research integrates agency theory (Jensen & Meckling, 1976) into the analysis of single-founder MFI governance, providing a theoretical foundation for understanding the heightened risk of moral hazard and self-dealing when checks-and-balances mechanisms are absent.

This problem is not only theoretical in dimension but also has real practical implications for micro and small business actors who intend to establish MFIs in the form of PT. Unclear norms can cause legal uncertainty that is contrary to the principle of legal certainty as mandated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Based on the background described above, this study aims to: (1) identify and analyse the legal antinomy between Article 7 paragraph (1) of the UUPT and Article 153A paragraph (1) of the UUCK; (2) analyse the implications of the antinomy on the establishment of MFIs in the form of PTs based on POJK Number 41 of 2024; and (3) formulate appropriate legal solutions in resolving the conflict of norms.

METHOD

This research is a normative legal research that examines positive legal norms in laws and regulations. Normative legal research is based on the premise that law is conceptualized as norms, rules, principles, or dogmas (Marzuki, 2019). The approach used includes: (1) the legislative approach, which is to review all laws and regulations related to the legal issues being studied; (2) conceptual approach, which refers to the views and doctrines that develop in legal science to find ideas that give birth to relevant legal understandings, legal concepts, and legal principles.

The legal materials used consist of: primary legal materials including Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 11 of 2020 concerning Job Creation, Law Number 7 of 2021 concerning the Harmonization of Tax Regulations, Government Regulation Number 7 of 2021 concerning the Facilitation, 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, Amendments, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises, as well as POJK Number 41 of 2024 concerning Microfinance Institutions. Secondary legal materials include law books, scientific journals, and other relevant scientific works.

The technique of collecting legal materials is carried out through literature studies and documentation techniques. The analysis of legal materials is carried out prescriptively using grammatical, systematic, and teleological interpretation methods to find the meaning of norms and resolve the found antinomy.

RESULTS AND DISCUSSION

Construction of Norms for the Establishment of Limited Liability Companies in the UUPT

A limited liability company as a legal entity has a distinctive character compared to other forms of business. According to Sutan Remy Sjahdeini (2019), a limited liability company is a legal entity that is a capital partnership, established based on an agreement, conducts business activities with authorized capital that is entirely divided into shares and meets the requirements set by the law and its implementing regulations. The element of "based on agreement" is an essential element that distinguishes a limited liability company from other legal entities.

Article 7 paragraph (1) of the Constitution stipulates that a company is established by 2 (two) or more people with a notary deed made in Indonesian. This provision contains 2 (two) cumulative conditions: first, the subjective requirement is the requirement that there be at least 2 (two) founders; Second, formal requirements in the form of making a deed of establishment before a notary in Indonesian. The requirement of a minimum of 2 (two) founders is a manifestation of the company's nature as a contract or agreement, because an agreement logically requires the existence of two or more parties (Fuady, 2018).

The consequences of this provision are emphasized in Article 7 paragraph (5) of the Constitution which states that after the Company obtains the status of a legal entity and the shareholders become less than 2 (two) people, within a maximum period of 6 (six) months from the date of the situation, the shareholders concerned are obliged to transfer some of their shares to another person or the company issues new shares to another person. Furthermore, Article 7

paragraph (6) of the Constitution stipulates that if the period as referred to has been exceeded, the shareholders remain less than 2 (two) persons, the shareholders are personally responsible for all engagements and losses of the company, and at the request of interested parties, the district court can dissolve the company.

Thus, in the UUPT regime, the requirement of at least 2 (two) founders is not only a condition of establishment, but also a condition of existence that must be fulfilled throughout the company's sustainability. This reflects the philosophy that a limited liability company is essentially a collective legal entity that cannot stand from a single will.

Normative Breakthrough of Article 153A of the UUCK: The Concept of Individual Companies

The Job Creation Law passed on October 5, 2020 brought a paradigmatic change in Indonesian corporate law. In order to facilitate business for Micro and Small Enterprises (MSEs), the Law inserts new provisions in the UUPT in the form of Articles 153A to 153J. These provisions fundamentally change one of the basic principles of the establishment of a limited liability company.

Article 153A paragraph (1) of the Law stipulates that "Companies that meet the criteria for Micro and Small Enterprises can be established by 1 (one) person." A Company established under this provision is hereinafter referred to as an Individual Company. In contrast to conventional companies, Article 153A paragraph (2) of the Law stipulates that an Individual Company is established by 1 (one) person by filling out a statement of establishment in Indonesian, and the registration is carried out electronically to the Minister.

An important implication of this provision is the loss of the requirement for making a notary deed in the establishment of an Individual Company, which is an essential formal requirement in the establishment of a conventional PT based on Article 7 paragraph (1) of the Constitution. This procedural convenience is designed to accommodate MSE actors who are often constrained by notary fees and complex formal procedures. Government Regulation Number 8 of 2021 then further regulates the procedures for registration and establishment of Individual Companies electronically through the Legal Entity Administration (SABH) system of the Ministry of Law and Human Rights.

Conceptually, an Individual Company is a single-member company or one-person company, a concept that has long been known in various world legal systems. In the Netherlands, the concept of a one-shareholder Besloten Vennootschap (BV) has been introduced through the company's legal reform. In the United Kingdom, the Companies Act 1985 introduces a private company limited by shares that can be established by 1 (one) person. Similarly, in the United States, many states allow the establishment of a Limited Liability Company (LLC) by 1 (one) person through the concept of a single-member LLC (Fuady, 2018; Kansil, 2020).

Legal Principles of Antinomy Settlement between Article 7 paragraph (1) of the UUPT and Article 153A paragraph (1) of the UUCK

Legal antinomy refers to a situation where there are 2 (two) legal norms that contradict each other so that they cannot be applied simultaneously (Marzuki, 2019). Hans Kelsen in his Pure Theory of Law distinguishes between total antinomy (total conflict) and partial antinomy (partial conflict). Total antinomy occurs when the two norms are in complete conflict with each other in their scope, while partial antinomy occurs when the norms are only partially

contradictory. In the context of the conflict between Article 7 paragraph (1) of the UUPT and Article 153A paragraph (1) of the UUCK, the antinomy that occurs is partial, because the conflict of norms only occurs at the level of establishment of the company that meets the criteria of MSEs, while for companies that do not meet the criteria of MSEs, Article 7 paragraph (1) of the UUPT remains valid without conflict.

The science of law provides a number of universally recognized principles for conflict resolution of norms. Each principle has a different philosophical foundation, scope of application, and reach. The following are systematically described the relevant principles to resolve the antinomy between Article 7 paragraph (1) of the Constitution and Article 153A paragraph (1) of the Constitution of the Constitution.

Basic Lex Posterior Derogat Legi Priori

The principle of lex posterior derogat legi priori means that newer laws and regulations override older laws and regulations if they regulate the same material and are at the same level of hierarchy. The philosophical foundation of this principle is rooted in the principle that the will of the latest lawmakers reflects the most up-to-date and most relevant legal policies to the development of society at the time the law was formed (Prasetyo, 2021).

In the context of the UUPT and UUCK, this principle can be applied because both are equivalent laws in the hierarchy of laws and regulations as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011. The UUCK promulgated in 2020 is a newer regulation compared to the UUPT promulgated in 2007. Temporally, Article 153A of the UUCK as a newer norm overrides Article 7 paragraph (1) of the UUPT as long as it relates to the establishment of a company by MSE actors. The application of this principle is in line with the logic that at the time of the formation of the UUCK, the lawmakers had considered and consciously chosen to provide an exception to the requirement of 2 (two) founders for the sake of ease of doing business for MSEs.

However, the principle of lex posterior derogat legi priori has limitations when applied solely. This principle only produces certainty when the newer norm explicitly revokes or modifies the older norm. In this case, the UUCK does not expressly repeal Article 7 paragraph (1) of the UUPT, but only adds an exception through Article 153A. This condition creates ambiguity as to whether the two norms can partially coexist or whether the new norm completely replaces the old one. Therefore, the principle of lex posterior derogat legi priori needs to be combined with other principles to produce a more comprehensive solution.

Basics of Lex Specialis Derogat Legi Generali

The principle of lex specialis derogat legi generali means that special regulations override general regulations if they both regulate the same material. This principle departs from the idea that special provisions are formed precisely to provide more appropriate and proportionate arrangements for certain situations or subjects that cannot be adequately handled by general norms (Marzuki, 2019). The Supreme Court in its various decisions has consistently applied this principle to resolve conflicts between sectoral legislation and general codification.

In the context discussed, Article 7 paragraph (1) of the UUPT is a general norm that applies to all limited liability companies regardless of business scale, while Article 153A of the UUCK is a special norm that applies exclusively to companies that meet the criteria for MSEs. Based on this principle, Article 153A of the UUCK applies as a lex specialis to Article 7 paragraph (1) of the UUPT in the context of the establishment of a company by MSE actors.

The specificity of Article 153A of the UUCK lies not only in its subject (MSE actors) but also in its different establishment procedures, namely through an electronic statement of establishment without a notary deed, thus forming a separate legal regime that is completely different from conventional PTs.

The principle of lex specialis is also relevant in the relationship between the Law and POJK Number 41 of 2024. As a sectoral regulation in the field of financial services, especially microfinance institutions, the POJK is a more specific regulation than the provisions of the UUCK which are general and cross-sectoral. However, the specificity of POJK is limited to aspects that are indeed within the authority of the OJK to regulate, and cannot be used to override higher legal norms in the hierarchy of laws and regulations.

Asas Lex Superior Derogat Legi Inferiori

The principle of lex superior derogat legi inferiori means that higher rules in the hierarchy of norms override lower rules in the event of a conflict between the two. This principle reflects the principle of constitutional supremacy and the hierarchy of norms (Stufenbau des Rechts) developed by Hans Kelsen, who asserts that every legal norm derives its validity from a higher norm and must not contradict it (Kelsen, 2007).

In the Indonesian legal system, the hierarchy of laws and regulations is regulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations, which stipulates the order: 1945 Constitution, MPR Decrees, Laws/Perppu, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency/City Regional Regulations. POJK, as a regulation issued by an independent institution formed under the law, is on an equal footing with ministerial regulations in the hierarchy of norms, namely under the law.

The principle of lex superior derogat legi inferiori becomes very crucial if POJK Number 41 of 2024 turns out to contain provisions that require MFIs in the form of PTs to be established by a minimum of 2 (two) people, a requirement that is contrary to Article 153A paragraph (1) of the UUCK. In such a situation, based on this principle, the POJK provision must be declared to have no binding legal force (onverbindend verklaring) as long as it is contrary to the UUCK of a higher position. The principle of lex superior derogat legi inferiori is not just an instrument for resolving the conflict of norms horizontally between 2 (two) laws, but is the main support for the supremacy of the law against the implementing regulations under it.

Asas Lex Posterior Generalis Non Derogat Legi Priori Speciali

This principle is an important modification of the principle of lex posterior derogat legi priori which states that newer laws of a general nature do not automatically override older laws but are of a special nature. In other words, the novelty of a norm does not by itself defeat the specificity of the previous norm. This principle was first developed in the Roman legal tradition and has been consistently accepted in the jurisprudence of various civil law countries, including Indonesia.

The relevance of this principle in the context discussed lies in the possibility of a reverse reading: if the UUPT is seen as a lex specialis that regulates in detail all aspects of the establishment of a PT (including the requirement of 2 (two) founders), while the UUCK is seen as a newer law but of a general and cross-sectoral nature (omnibus law), then based on this

principle, the provisions of the UUPT can actually be maintained. However, such a reading is inappropriate in this context, because Article 153A of the UUCK is actually a more specific norm (specifically for MSEs) than Article 7 paragraph (1) of the UUPT which applies generally to all companies. Thus, this principle actually strengthens the application of Article 153A of the UUCK as a norm that is simultaneously newer and more specific.

The Principle of Legal Certainty (*Rechtszekerheid*) as a Guiding Principle

In addition to the four principles of norm conflict above which are technical-methodological, there is 1 (one) substantive principle that must always be a guide in the resolution of legal antinomy, namely the principle of legal certainty (rechtszekerheid). The principle of legal certainty contains demands that the law be clear, predictable, and consistent, so that citizens can know for sure their legal rights and obligations (Mertokusumo, 2018). This principle has received constitutional legitimacy through Article 28D paragraph (1) of the 1945 Constitution which guarantees the right to fair legal recognition, guarantee, protection, and certainty.

In the context of the legal antinomy discussed, the application of technical principles such as lex posterior and lex specialis results in logically consistent conclusions, but does not necessarily result in legal certainty for business actors if the text of the conflicting norms is not formally revised or harmonized. An MSE actor who wants to establish an MFI in the form of a limited liability company with 1 (one) founder still faces the risk of rejection from administrative officials or law enforcement who only read the text of Article 7 paragraph (1) of the UUPT without considering Article 153A of the UUCK. This procedural uncertainty itself is a form of violation of the principle of legal certainty.

Therefore, the principle of legal certainty does not stop at the level of interpretive antinomy resolution, but requires legislative follow-up in the form of explicit harmonization of norms. This is in line with the mandate of Article 5 letter f of Law Number 12 of 2011 which stipulates the principle of clarity of formulation as one of the principles for the formation of good laws and regulations, namely that every legislation must meet the technical requirements for the preparation of laws and regulations, systematics, choice of words or terms, as well as clear and easy-to-understand legal language, so as not to cause various kinds of interpretations in its implementation.

Matrix of Principle Application in the Context of Antinomy of UUPT and UUCK

Based on the description of the five principles above, a matrix for the application of legal principles in resolving the legal antinomy between Article 7 paragraph (1) of the Constitution and Article 153A paragraph (1) of the Constitution can be formulated as follows: (1) The principle of lex posterior: Article 153A of the Constitution (2020) temporarily overrides Article 7 paragraph (1) of the Constitution (2007) for the same material at the level of the equivalent hierarchy; (2) The principle of lex specialis: Article 153A of the UUCK as a special norm for MSEs overrides Article 7 paragraph (1) of the UUPT as a general norm in the context of the establishment of a company by MSEs; (3) The principle of lex superior: UUCK and UUPT are at the same level in the hierarchy of norms so that this principle cannot be directly implemented for the resolution of horizontal conflicts between the two, but becomes crucial if there is a conflict between POJK and UUCK; (4) The principle of lex posterior generalis non derogat legi priori speciali: strengthening the position of Article 153A of the UUCK which is more specific and newer than Article 7 paragraph (1) of the UUPT; (5) The principle of legal

certainty: demanding the harmonization of norms formally and explicitly through legislative mechanisms, in addition to interpretive settlements.

The cumulative application of these principles results in a coherent conclusion: Article 153A paragraph (1) of the UUCK applies and partially overrides Article 7 paragraph (1) of the UUPT, especially for the establishment of a company by MSE actors. Meanwhile, for the establishment of a limited liability company that does not meet the criteria for MSEs, Article 7 paragraph (1) of the UUPT remains valid and binding. However, the principle of legal certainty requires that this interpretive settlement be confirmed through explicit legislative harmonization, considering that the Law does not expressly repeal or amend the wording of Article 7 paragraph (1) of the Constitution.

Analysis Based on the Microfinance Institutions Act and the Financial Sector Development and Strengthening Act

Legal Framework of Law Number 1 of 2013 concerning Microfinance Institutions (MFI Law)

Law Number 1 of 2013 concerning Microfinance Institutions (MFI Law) is a basic regulation (lex generalis sectoralis) that lays the legal foundation for the existence and operation of MFIs in Indonesia.

Article 4 of the MFI Law stipulates that MFIs aim to: (a) increase access to micro-scale funding for the community; (b) helping to increase economic empowerment and community productivity; and (c) to help increase the income and welfare of the community, especially the poor and/or low-income people. Thus, MFIs are not just ordinary financial entities, but are state socio-economic policy instruments aimed at reaching community groups that are not served by formal financial institutions. This character puts MFIs in a unique position: on the one hand they are required to operate efficiently like financial institutions, on the other hand they are required to carry out social missions that are not solely profit-oriented.

Article 5 paragraph (1) of the MFI Law emphasizes that MFIs are in the form of legal entities, namely: (a) cooperatives; or (b) a limited liability company. This provision contains important legal implications: unlike business entities in general that are not required to be legal entities, the MFI Law imperatively requires MFIs to choose one of two forms of legal entities that are defined in a limited manner. The restriction on the choice of legal entity forms in cooperatives or PTs reflects policy considerations that only the two forms of legal entities are considered to have an adequate governance framework and accountability structure to protect the interests of customers.

With regard to the conditions of establishment, Article 5 paragraph (2) of the MFI Law stipulates that MFIs in the form of limited liability companies as referred to in paragraph (1) b, their shares must be owned by at least by: (a) Indonesian citizens; and/or (b) cooperatives. These provisions do not explicitly govern the minimum number of founders or shareholders. However, the phrase "at least" in the context of shareholding implicitly assumes the possibility of more than one shareholder, while at the same time not ruling out the possibility of a single ownership of all shares by one Indonesian citizen or one cooperative.

Implications of Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law)

Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law) is the latest and most comprehensive financial sector law in the Indonesian

legal system. Formed using the omnibus law method as the UUCK, the P2SK Law amends, adds, and/or repeals various provisions in 17 (seventeen) laws in the financial sector, including the provisions in the MFI Law. Therefore, the analysis of the antinomy discussed in this study cannot ignore the presence of the P2SK Law as a layer of the latest norms that encompass the legal framework of MFIs.

One of the substantive changes made by the P2SK Law to the MFI Law is changes to the provisions for the regulation and supervision of MFIs. The P2SK Law strengthens the OJK's mandate as the sole regulatory and supervisory authority in the financial services sector, including MFIs. Within the framework of the P2SK Law, the OJK is not only authorized to regulate and supervise existing MFIs, but also has the authority to set standards for licensing, capital, management, and governance that must be met by MFIs. The expansion of the OJK's authority has a direct impact on the space for sectoral regulation formation in regulating the requirements for the establishment of MFIs in the form of limited liability companies.

The P2SK Law introduces a stronger concept of consumer protection in the financial services sector. The articles of the P2SK Law that regulate consumer protection affirm the obligation of Financial Services Business Actors (PUJK), including MFIs, to: (a) provide true, clear, and honest information about products and/or services; (b) adequately handle consumer complaints; and (c) to exercise fair business practices. In the context of MFIs in the form of a limited liability company with a sole proprietorship, this consumer protection obligation adds to the burden of responsibility that is structurally more difficult for entities whose entire decision-making is centered on one person.

The P2SK Law also regulates good governance as a general obligation for all financial service institutions, including MFIs. This provision requires a separation of functions between the supervisory function and the supervised organ (management function). In the context of MFIs in the form of limited liability companies, this separation of functions should ideally be realized through the existence of the Board of Commissioners as a supervisory organ separate from the Board of Directors as the implementing organ. The requirement for separation of functions becomes problematic if MFIs in the form of a limited liability company are established by a single founder who concurrently performs all corporate functions, because basically there is no internal mechanism that can guarantee the independence of the supervisory function from the implementation function.

New Antinomial Layer: P2SK Law as a Lex Posterior as well as a Lex Specialis in the Financial Sector

The presence of the P2SK Law in this framework adds a significant layer of normative complexity. The P2SK Law promulgated in 2023 is a newer regulation than the Law (2020). In the event that there is a provision in the P2SK Law that regulates special requirements for MFIs in the form of a PT that is different from the provisions of the UUCK, the question arises: which principle applies, lex posterior (the P2SK Law as a newer law) or lex specialis (Article 153A of the UUCK as a more specific norm for MSEs)?

The answer to this question requires a careful identification of the character of each norm. Article 153A of the UUCK is specific in the dimension of its legal subject (a company that meets the criteria for MSEs) and the dimension of its establishment procedure (one founder without a notary deed). Meanwhile, the provisions of the P2SK Law that regulate the governance of MFIs are specific in the dimensions of the business sector (financial services)

and the dimension of their objectives (consumer protection and financial system stability). The two norms have the potential to contradict in the scope of the slice: namely when MFIs in the form of PTs meet the criteria for MSEs and at the same time are subject to the governance obligations set by the P2SK Law.

In such a situation, the author argues that the resolution of norm conflicts must take into account the purpose of the norms (teleologische interpretatie) of each law. Article 153A of the UUCK aims to reduce the barriers to the formation of legal entities for MSE actors for the sake of ease of doing business. Meanwhile, the governance provisions in the P2SK Law aim to protect consumers of financial services and maintain financial system stability. In the context of MFIs that inherently manage public funds, the goal of consumer protection and financial system stability has a higher weight of public interest than the goal of ease of doing business alone.

Synthesis: The Position of MFIs in the Intersection of Norms of the UUPT, UUCK, MFI Law, and P2SK Law

Based on the overall analysis of the four layers of norms (UUPT, UUCK, LKM Law, and P2SK Law), a normative map can be formulated as follows. First, the UUPT lays down the general principle that a PT is established by a minimum of 2 (two) people, which technically still applies as a residual norm for companies that do not meet the criteria for MSEs. Second, the UUCK through Article 153A provides an exception to this principle specifically for companies that meet the criteria for MSEs, by allowing the establishment by 1 (one) person. Third, the MFI Law as a sectoralist lex generalist requires MFIs in the form of PTs, without explicitly regulating the minimum number of founders, but requiring the fulfillment of governance, capital, and management requirements regulated by the OJK. Fourth, the P2SK Law as a lex posterior sectoralist strengthens and expands the consumer protection and governance framework for all financial services institutions, including MFIs, with a clear priority on the interests of consumer protection and financial system stability

The slice of the four layers of norms results in the conclusion that the establishment of MFIs in the form of a limited company by 1 (one) person is something that is technically possible by the Law, but is substantially limited by the requirements of governance, consumer protection, and supervision arising from the MFI Law and the P2SK Law. This condition creates a layered legal regime where formal validity (legal corporate law) and sectoral compliance (meeting all OJK requirements) are two standards that must be met cumulatively and cannot be chosen either.

Microfinance Institutions in the Form of Limited Liability Companies in the Framework of POJK Number 41 of 2024

Microfinance Institutions as entities engaged in financial services for low-income people have been regulated through the MFI Law. This law stipulates that MFIs must be in the form of legal entities and can be in the form of cooperatives or limited liability companies. This form of legal entity is a requirement for MFI operational licensing.

The latest development in MFI regulations is the issuance of POJK Number 41 of 2024 which replaces the previous regulation. Article 2 paragraph (1) of the MFI POJK explicitly stipulates that MFIs can be in the form of: (a) cooperatives; and (b) limited liability companies. This provision provides institutional flexibility for MFI founders to choose the form of legal entity that best suits their needs and capacity.

MFIs that choose the form of a limited liability company in carrying out their activities must comply with the provisions of corporate law, both the Law and the Law and the Law and its implementing regulations. The critical question that arises is: can an MFI in the form of a PT be established by 1 (one) person as allowed by Article 153A paragraph (1) of the UUCK?

To answer this question, it is necessary to analyze 2 (two) main aspects. First, whether MFIs are included in the category of MSEs required by Article 153A of the UUCK. Based on Article 1 number 2 of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises (MSME Law) and Article 35 of Government Regulation Number 7 of 2021, the criteria for MSEs are determined based on business capital or annual sales results. Micro Enterprises have a maximum working capital of IDR 1,000,000,000.00 (one billion rupiah), while Small Enterprises have a business capital between IDR 1,000,000,000.00 (one billion rupiah) to IDR 5,000,000,000.00 (five billion rupiah).

Second, it should be noted that MFIs have a distinctive character as a financial services institution supervised by the Financial Services Authority (OJK). MFI activities include business development services and community empowerment, either through loans or financing in micro-scale businesses to members and the community, deposit management, and the provision of business development consulting services. Given that MFIs operate in the financial services sector, there are additional requirements outside of corporate law that must be met, including minimum capital, ownership, management, and licensing requirements from the OJK.

MFI Risk Assessment with 1 (One) Founder: Analysis of Business Activities and the Urgency of Regional Scope Restrictions

The assessment of the risk profile of MFIs in the form of a limited liability company established by 1 (one) person must be based on a deep understanding of the characteristics of MFI's business activities. Based on Article 2 of Law Number 1 of 2013 concerning Microfinance Institutions, MFIs are authorized to carry out business activities in the form of: (a) providing loans or financing to micro-scale businesses and members of the community; (b) deposit management; and (c) the provision of business development consulting services. The simultaneous implementation of fund-raising and loan disbursement activities puts MFIs in the category of financial intermediation institutions that manage third-party funds which inherently carry a much higher risk than ordinary commercial actors.

The essence of the high risk in MFIs in the form of a limited liability company with a sole proprietorship lies in the absence of an institutional checks and balances mechanism. In a conventional PT established by 2 (two) or more founders, deliberation between shareholders provides a natural mechanism to oversee management decisions, especially those related to credit approval, interest rate determination, and management of customer deposit funds. The disappearance of this deliberative mechanism in the structure of a single founder concentrates all decision-making authority on one person. From the perspective of agency theory, this concentration of authority removes the principal-agent tension that usually disciplines management behavior (Jensen & Meckling, 1976), thereby increasing the risk of moral hazard, conflict of interest (self-dealing), and misuse of client funds.

This risk is further exacerbated by the characteristics of MFI customers. MFIs generally serve people with limited financial literacy, and their depository customers, which often consist of small farmers, microtraders, and rural household businesses, have limited capacity to independently assess the financial health of the institutions where they deposit deposits.

Information asymmetry between MFIs and their customers leads to systemic abuse by single founders and directors that can result in significant losses to socially and economically vulnerable groups of people, and these losses are difficult to retroactively recover.

Based on this background, the analysis of the scope of MFI's operational area has very important analytical significance. Based on Article 16 paragraph (1) of the MFI Law and its implementing regulations, including POJK Number 41 of 2024, the scope of MFI's business activities is divided into 3 (three) levels: (a) sub-district/village level; (b) sub-district level; and (c) district/city level. Each level correlates with a wider customer base, a larger volume of deposits, a higher loan exposure, and a greater systemic risk in the event of an institutional failure.

The authors argue that the risk dimension of the establishment of MFIs in the form of a limited liability company by a single founder is not uniform at all levels of the region and demands a differentiated regulatory response. At the sub-district/village level, MFIs operate in geographically compact communities, characterized by strong social capital, high levels of mutual knowledge between community members, and relatively low transaction volumes. The social attachment of MFIs in such a context serves as an informal governance mechanism: the founders and managers are personally known to the customers, and the reputational consequences of violations are immediate and significant. These conditions partially substitute formal institutional oversight, making the governance deficit in the single-founder structure relatively less critical.

In contrast, MFIs that operate at the sub-district or district/city level serve a much wider and more anonymous customer base. At this level, the informal social control that characterizes village-level MFIs is weakening, customer anonymity is increasing, loan portfolios are more complex, and the potential systemic impact of bankruptcy is increasing. The governance structure concentrated on single-establishment PTs that do not have institutional safeguards is structurally inadequate to manage the obligations arising from the broader scope of operations.

The above analysis supports a proposition de lege ferenda: the application of Article 153A paragraph (1) of the Law on MFIs in the form of PTs should be subject to regional restrictions, namely allowing only a single founding structure for MFIs whose operational scope is limited to the sub-district or village level. This proposition is normatively justified by the principle of proportionality, which requires that the regulatory burden be calibrated according to the magnitude of the risks faced. Fully implementing the requirement of 2 (two) founders in village-level MFIs serving socially cohesive small communities creates barriers to entry that are disproportionate to the governance benefits obtained, while the same requirement is fully proportional for MFIs with the operational scope at the sub-district or district/city level.

This differentiated approach is also in line with the broader legislative intent of the UUCK, which aims to lower barriers to formal business participation for small-scale community business actors. MFIs in the form of a limited liability company at the village level established by a single founder represent the right category of community-based financial initiatives designed to be empowered by the concept of Individual Companies. Denying access to this category to the Individual Company forum on the basis of generic financial services sector risks without distinguishing between regional levels will thwart the legislative intent of the UUCK without commensurate regulatory benefits.

From a comparative perspective, this tiered approach resonates with regulatory frameworks in other jurisdictions. The Reserve Bank of India (RBI) applies a differentiated regulatory framework to microfinance institutions based on portfolio size and geographic reach, imposing lighter governance requirements on smaller and community-rooted entities. Similarly, the Bangko Sentral ng Pilipinas (BSP) distinguishes between microfinance-oriented rural banks, savings banks, and cooperative banks based on their operational scope, applying proportionate ownership and governance requirements at each level. These comparative examples reinforce the principle that a uniform governance architecture across diverse levels of the microfinance sector is neither an inevitability nor an optimal choice.

However, territorial restrictions alone are not sufficient to fully mitigate the risks inherent in MFIs in the form of limited liability companies with a sole proprietorship at the village level. Complementary safeguards must be built into the regulatory framework. The safeguards must at least include: (a) the obligation of the fit and proper test applied by the OJK to the sole founder before the issuance of an operational license; (b) the obligation to establish a board of commissioners, which in the current regulations not all financial services institutions including MFIs are required to have members of the board of commissioners; and (c) the determination of the maximum limit of fund-raising calibrated with the operational scope of the village level, which if exceeded requires MFIs to restructure themselves into dual-partner PTs or apply for permits at a higher level. These safeguards will maintain the accessibility rationality of the Individual Company concept while managing the governance risks inherent in it in the special context of deposit collection activities.

Legal Implications and Normative Solutions

Based on the above analysis, the application of Article 153A paragraph (1) of the UUCK regarding the establishment of MFIs in the form of limited liability companies requires several cumulative requirements that must be met. First, the MFI concerned must meet the MSE criteria based on the MSME Law and Government Regulation Number 7 of 2021. MFIs that have business capital exceeding the MSE threshold cannot use the provisions of Article 153A of the UUCK and are still subject to Article 7 paragraph (1) of the UUPT, which requires a minimum of two founders.

Second, although it is legally possible for a corporation to be established by one person, sectoral provisions in the field of financial services can set stricter requirements. POJK Number 41 of 2024 needs to be further examined to determine whether it contains special provisions regarding the number of founders, ownership, or administrators of MFIs in the form of PTs that can have implications for the non-applicability of the provisions of Individual Companies. In this context, the principle of lex specialis in the financial services sector is often stricter than in general corporate law.

Third, there are governance issues that need to be considered. Individual Companies have a simplified governance structure, where the sole owner can concurrently serve as the Board of Directors. However, for MFIs engaged in the financial services sector, the requirements for good governance are absolute to protect the interests of customers and other stakeholders. The requirements for fit and proper tests, separation of management between the Board of Directors and the Board of Commissioners, and an adequate internal control system can be obstacles to the implementation of the concept of Individual Companies in the context of MFIs.

From the perspective of the hierarchy of norms as constructed by Hans Kelsen and adopted in Article 7 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, POJK as a law regulation at the ministerial regulation level cannot regulate matters that are contrary to the law. Thus, if POJK Number 41 of 2024 requires MFIs in the form of limited liability companies to have at least two founders, then this provision is contrary to Article 153A paragraph (1) of the UUCK, which is a law. Therefore, the POJK provisions must be declared invalid based on the principle of lex superior derogat legi inferiori.

To overcome the existing legal uncertainty, several normative steps are needed. First, the Otoritas Jasa Keuangan (OJK) as a regulator of the financial services sector can issue a circular or technical directive that provides clarity on the application of the concept of Individual Companies in the context of MFIs, by integrating regional differentiation as recommended above. Second, in the long term, it is necessary to study the possibility of establishing special provisions regarding Individual Companies in the financial services sector, especially a multi-level governance framework for MFIs that permits single-founder operations at the sub-district or village level while maintaining multi-founder requirements for operations across a broader geographic scope.

CONCLUSION

Based on the results of the research and discussion that has been described, several conclusions can be drawn as follows:

First, there is a partial legal antinomy between Article 7 paragraph (1) of the UUPT, which requires the establishment of a company by a minimum of two people, and Article 153A paragraph (1) of the UUCK, which allows the establishment of a company by one person for MSEs. This antinomy is partial because the conflict of norms only occurs at the level of establishment of a company that meets the criteria of MSEs, while for companies that do not meet the criteria of MSEs, the provisions of Article 7 paragraph (1) of the UUPT remain valid. This antinomy can be resolved through the cumulative application of the principles of lex posterior and lex specialis, which places Article 153A of the UUCK as the norm that applies to the establishment of a company by MSE actors.

Second, with regard to MFIs in the form of limited liability companies, POJK Number 41 of 2024 does open opportunities for MFIs to form limited liability companies. However, MFIs in the form of a limited liability company with sole proprietorship carry significant governance risks considering the nature of fundraising from MFIs' business activities, the centralisation of decision-making authority in one individual, and the vulnerability of the communities served. These risks are not uniform: they are substantially lower at the sub-district or village level, where social attachment provides a substitute for informal governance, than at the district or city level. Therefore, the application of a single-founder permit based on Article 153A of the UUCK should, de lege ferenda, be limited regionally only to MFIs that operate solely at the sub-district or village level, accompanied by the obligation of fit and proper testing, the regulation of the minimum number of members of the Board of Commissioners, and fundraising limits proportional to village-level operations.

Third, the existing legal antinomy and the absence of a differentiated regional governance framework for MFIs in the form of a single-entity limited liability company create layered legal uncertainty that requires immediate resolution through a two-path reform strategy: (a) the

issuance of OJK regulatory guidelines that operationalise the multi-level governance architecture for MFIs, calibrated based on the scope of territory and the risk profile of fundraising activities, to provide legal certainty for all stakeholders whilst protecting debtors intended to benefit from MFI services; and (b) examining the possibility of establishing special provisions regarding Individual Companies in the financial services sector, particularly a multi-level governance framework for MFIs that permits single-founder operations at the sub-district or village level whilst maintaining multi-founder requirements for operations across a broader geographic scope.

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