REFORMULATION OF THE REQUIREMENTS FOR THE ESTABLISHMENT OF LIMITED LIABILITY COMPANIES AND THE POSITION OF SINGLE-MEMBER COMPANIES IN REALIZING MASLAHAH-BASED LEGAL CERTAINTY

Ariyanto Soewondo Geni, Budi Santoso, Sihabudin, Hero Samudra, Reka Dewantara
Universitas Brawijaya, Indonesia
Email: ariyanto_geni@student.ub.ac.id

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Abstract

The reform of the establishment of Limited Liability Companies (Perseroan Terbatas, PT) through the Job Creation Law and Government Regulation No. 8 of 2021 introduced the Single-Member Company (Perseroan Perorangan) as a new form of legal entity. However, this regulatory framework gives rise to a normative gap, reflected in the ambiguity of the position of the Single-Member Company within Indonesian legal entity theory, its inconsistency with the two-party principle in civil law, and the weakness of creditor protection and internal oversight. These shortcomings generate problems of legal certainty and public maslahah. This study aims to evaluate the historical–normative foundations of the requirements for *establishing a PT, assess the relevance of the single-member establishment model, and formulate recommendations for legal reconstruction based on the principles of legal certainty and maslahah. Employing normative legal research with statutory, comparative, and conceptual approaches, the study compares the structure of Single-Member Companies across various jurisdictions to identify international standards and normative gaps within Indonesian law. The findings indicate that the Single-Member Company model is compatible with modern legal entity theory, yet it has not provided adequate instruments of governance, reporting, and legal protection to prevent moral hazard and the commingling of assets. The contribution of this study lies in offering a normative reconstruction of PT establishment requirements that balances procedural simplification with the strengthening of maslahah-based legal certainty, so that PTs, whether founded by two or by a single founder, may function as institutional instruments that are fair and secure for the public.*

Reformasi pendirian Perseroan Terbatas melalui Undang-Undang Cipta Kerja dan Peraturan Pemerintah No. 8 Tahun 2021 memperkenalkan Perseroan Perorangan sebagai bentuk badan hukum baru. Namun, regulasi ini menghadirkan gap normatif berupa ketidakjelasan posisi Perseroan Perorangan dalam teori badan hukum Indonesia, ketidaksinkronan dengan asas dua pihak dalam hukum perdata, serta lemahnya perlindungan bagi kreditur dan pengawasan internal, sehingga menimbulkan persoalan kepastian hukum dan kemaslahatan publik. Penelitian ini bertujuan mengevaluasi dasar historis-normatif syarat pendirian PT, menilai relevansi model pendirian satu orang, dan merumuskan rekomendasi rekonstruksi hukum berbasis prinsip kepastian hukum dan maslahah. Menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, komparatif, dan konseptual, penelitian ini membandingkan struktur Single-Member Company/Perseroan Perorangan di berbagai yurisdiksi untuk mengidentifikasi standar internasional dan kekosongan dalam hukum Indonesia. Hasil penelitian menunjukkan bahwa model Perseroan Perorangan selaras dengan teori badan hukum modern, namun belum menyediakan instrumen tata kelola, pelaporan, dan perlindungan hukum yang memadai untuk mencegah moral hazard dan pencampuran aset. Kontribusi penelitian ini adalah memberikan rekonstruksi normatif syarat pendirian PT agar seimbang antara simplifikasi prosedural dan penguatan kepastian hukum berbasis *maslahah, sehingga PT baik dua pendiri maupun satu pendiri dapat menjadi instrumen kelembagaan yang adil dan aman bagi publik.*

Keywords: *Limited Liability Company, Legal Certainty, Maslahah Principle, Single-Member Company*

Introduction

The implementation of the Single-Member Company (SMC) across various jurisdictions demonstrates that the number of founders is no longer an essential element for the existence of a legal entity. The Twelfth Company Law Directive and its subsequent revisions require European Union Member States to provide options for online company formation without intermediaries, thereby facilitating the adaptation of MSMEs and SMCs to the digital era.[1] This development reflects a paradigm shift in modern company law, which emphasizes asset partitioning, limited liability, and accountability as the core foundations of the corporation, regardless of the number of its founders.[2]

Indonesia has adopted a comparable model through the Job Creation Law and Government Regulation No. 8 of 2021, which introduced the Single-Member Company (Perseroan Perorangan) as a form of procedural simplification for MSMEs.[3] Yet this regulatory framework has

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[1] Virginijus Bitė and Ivan Romashchenko, "Online Formation of Companies in Lithuania in a Comparative Context: Implementation of the Digitalisation Directive and Beyond," *European Business Organization Law Review*, 2023, 1–32, https://doi.org/10.1007/s40804-023-00282-6.

[2] Henry Hansmann and Reinier Kraakman, "Organizational Law as Asset Partitioning," *European Economic Review* 44 (2000): 807–17, https://doi.org/10.1016/s0014-2921(00)00046-5; Thilo Kuntz, "Asset Partitioning, Limited Liability and Veil Piercing: Review Essay on Bainbridge/Henderson, Limited Liability," *European Business Organization Law Review* 19 (2017): 439–63, https://doi.org/10.1007/s40804-018-0108-4; Ron Harris, "A New Understanding of the History of Limited Liability: An Invitation for Theoretical Reframing," *Journal of Institutional Economics* 16 (2020): 643–64, https://doi.org/10.1017/s1744137420000181.

[3] Raudhea Vara Yulfa Chairy, "Implikasi Normatif Undang-Undang Cipta Kerja Terhadap Perseroan Perorangan Sebagai Reformasi Hukum Bisnis Di Indonesia," *Indonesia Berdaya* 4, no. 4 (2023): 1347–58, https://doi.org/10.47679/ib.2023565; Yuliana Duti Harahap et al., "Pendirian Perseroan Terbatas Perseorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja," *Notarius*, ahead of print, 2021,

generated fundamental issues concerning legal certainty and maslahah, particularly because the provisions of the Company Law (UUPT), which previously required two founders, were not comprehensively revised. The Single-Member Company is legally recognized as a legal entity but is owned by only one person, diverging from the classical conception of legal personality that demands a clear separation between the owner and the entity.[4] The absence of supervisory organs such as a board of commissioners, coupled with the lack of explicit creditor-protection mechanisms, further heightens the risks of moral hazard, asset commingling, and the vulnerability of third parties.[5]

The principal legal issue addressed in this study lies in the indeterminacy of the normative foundations of the Single-Member Company within the Company Law and the implementing regulations of the Job Creation Law, particularly with respect to the disharmony of norms concerning the number of founders, the absence of supervisory organs, and the limited availability of creditor-protection instruments. Over the past three to five years, a range of studies has underscored those reforms of company formation, including the single-member model, have increasingly moved toward simplifying corporate structures while reinforcing legal certainty. Although the Single-Member Company was intended to facilitate

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https://doi.org/10.14710/nts.v14i2.43800; Dewi Masitah et al., "Urgensi Adanya Akta Notaris Terkait Pendirian Perseroan Perseorangan Pasca Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang," *Syntax Idea*, ahead of print, 2023, https://doi.org/10.46799/syntax-idea.v5i8.2471.

[4] Randikha Prabu Raharja Sasmita et al., "The Concept of Reasons for Eliminating Corporate Crime in Criminal Law in Indonesia," *Heliyon* 9 (2023), https://doi.org/10.1016/j.heliyon.2023.e21602.

[5] Femmy Silaswaty Faried et al., "Individual Corporations in Indonesia: Fostering Economic Growth and Fairness through Simplified Business Formation: Perusahaan Perseorangan Di Indonesia: Mendorong Pertumbuhan Ekonomi Dan Keadilan Melalui Penyederhanaan Pendirian Usaha," *Rechtsidee* 11, no. 2 (2023): 10.21070/jihr.v12i2.998, https://doi.org/10.21070/jihr.v12i2.998; Ayu Kholifah and Shelly Kurniawan, "One-Person Limited Liability Company: Considering Company's Organ Governance of The Indonesian Legal Entities for Micro and Small Enterprises," *Diponegoro Law Review* 9, no. 1 (2024), https://doi.org/https://doi.org/10.14710/dilrev.9.1.2024.1-18; Rahmi Sahabuddin et al., "Small Business, Big Questions: The Legal Landscape of Single-Member Limited Liability Companies Post-Job Creation Law," *Journal of Management World* 2025, no. 1 (2025): 312–18, https://doi.org/10.53935/jomw.v2024i4.666.

MSMEs, legal uncertainty persists in the mechanism for status conversion when a business expands beyond the micro and small enterprise category, as current regulations require dissolution prior to transformation into an ordinary Limited Liability Company(LLC).[6] Other studies highlight that the post–Job Creation Law one-man company policy has not yet fully provided adequate instruments of supervision and creditor protection, thereby creating potential for moral hazard and asset commingling.[7] Meanwhile, analyses of the principle of normative clarity in the legalization of legal entities reveal inconsistencies in legal formulation that impede the effectiveness of registration and legal recognition.[8] At the global level, trends in company law reform in both the European Union and Oman indicate a move toward eliminating minimum capital requirements and strengthening the single-member company model to promote entrepreneurship and institutional stability. Taken together, these findings show that the reform of the Single-Member Company in Indonesia remains at an early stage and has yet to address fundamental needs relating to legal certainty and *maslahah*. Accordingly, this study offers a novel contribution through the reformulation of the requirements for establishing a limited liability company and the reconstruction of the position of the Single-Member Company within a *maslahah*-based framework.

These concerns arise because the three aspects in question directly engage the principles of legal certainty and public *maslahah* (hifz al-māl and rafʾ al-ḍarar), which should underpin the validity of corporate regulation. *Maqāṣid al-sharīʿah* emphasizes five principal objectives of Islamic law, including the protection of property (hifz al-māl) and the prevention of harm (rafʿ al-ḍarar/mafsadah). In the contemporary context, *maqāṣid al-sharīʿah* has emerged as a central paradigm of legal reform, demanding

[6] Dodo Wiradana Wiriatma et al., *Advocating Legal Certainty in Status Transition of Individual Companies Exceeding MSEs Criteria to Limited Liability*, no. 8 (2025).

[7] Ahmad Yani, "Comparative Review of The Practices of Sole Proprietorship Company Supervision Mechanism," *Prophetic Law Review* 5, no. 2 (2023): 159–78, https://doi.org/10.20885/PLR.vol5.iss2.art2.

[8] Amelia Sri Kusuma Dewi and Anindita Purnama Ningtyas, "The Fulfillment of The Clarity Principle Towards the Formulation Arrangement in The Recognition of Statutory Bodies Within the Limited Liability Company," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 156–75, https://doi.org/10.29303/ius.v11i1.1206.

regulatory frameworks that are adaptive while remaining oriented toward universal *maslahah*[9].

Research Methods

This study employs a normative legal approach with doctrinal and comparative orientations. Its epistemological foundation rests on the view that law is a normative system that can be examined through rational interpretation of legislation, doctrine, and judicial decisions. This approach aligns with the study's objectives: to critically evaluate the legal basis for the minimum requirement of two founders in the establishment of a Limited Liability Company (LLC) and to assess the feasibility of implementing the Sole Member Company (SMC) model in Indonesia. From the perspective of legal epistemology, normative research is considered the most appropriate, as it focuses on assessing the internal coherence of norms, their alignment with regulatory aims, and their comparability with international standards through the construction of positive law and legal theory.

This study applies three principal approaches: (1) the statutory approach, (2) the comparative approach, and (3) the conceptual approach. The statutory approach is used to examine the normative structure governing PT formation in Indonesia, including provisions in Law No. 40 of 2007 on Limited Liability Companies, Government Regulation No. 8 of 2021, and other relevant implementing regulations. The comparative approach is employed to review developments in SMC regulation in jurisdictions that have adopted it, such as the United Kingdom, the European Union, the United States, Singapore, Malaysia, and Australia. The conceptual approach is applied to examine theories related to entity theory, limited liability, asset partitioning, and the principles of good corporate governance associated with the flexibility of legal entities.

Primary legal materials include national legislation, international instruments, and relevant judicial decisions. Secondary legal materials consist of books, reputable international legal journals (Q1–Q2), reports by

[9] Choirur Rois et al., "Islamic Law Paradigm Responding Conflicts of Interest of Economic Development and Ecological Conservation Hifdz Al-Bi'ah Perspective," *Al-Istinbath: Jurnal Hukum Islam*, ahead of print, 2024, https://doi.org/10.29240/jhi.v9i1.8660.

international institutions, and academic studies on SMCs and the principles of company law. Tertiary legal materials include legal dictionaries, legal encyclopedias, and academic literature indexes to enhance conceptual accuracy. Sources are selected on the basis of credibility, relevance, and currency, with particular emphasis on publications from the past ten years to ensure that the normative argumentation reflects global developments.

Legal materials are collected through systematic searches of national legal databases and international databases such as HeinOnline, Westlaw, LexisNexis, Scopus, and SpringerLink. The analysis employs a deductive–inductive technique. Deductive analysis is used to derive normative implications from legal theory and corporate principles, while inductive analysis is used to identify patterns and tendencies in international practice concerning SMCs. Comparative analysis is conducted by identifying similarities, differences, and policy rationales in other countries' implementation of SMCs. Conceptual analysis is applied to assess the compatibility of the SMC model with the Indonesian legal system and to evaluate the potential for regulatory harmonization.

Methodological rigour is maintained through the triangulation of legal sources, by comparing national provisions with academic references and international practice. The validity of the argumentation is strengthened through systematic, grammatical, teleological, and historical interpretation of legal norms. The study also employs comparative validation by examining multi-jurisdictional policies to ensure that its conclusions are neither partial nor based on a single national model. Each finding is tested against the principles of the rule of law, legal certainty, economic efficiency, and the protection of minority shareholders.

Discussion

Legal Certainty as a Normative Foundation for the Establishment of Limited Liability Companies

Legal certainty is a fundamental pillar in the construction of modern legal systems and serves as the philosophical basis for the creation and regulation of legal entities, including the Limited Liability Company (LLC). In legal scholarship, legal certainty is understood as a condition in which the law can be identified, predicted, and applied consistently, thereby enabling parties to determine their legal actions consciously. This conception is rooted in legal positivism, yet it has developed further within contemporary legal theories that stress the relationship between formal certainty and substantive justice. Fuller, for instance, argues that good law must satisfy principles of transparency, non-contradiction, consistency, and effective enforceability. These principles are highly relevant to corporate regulation, where the legal structure and constitutional documents form the basis for governing relations among owners, management, and third parties.[10]

In the Indonesian context of LLC formation, legal certainty serves a dual function. First, it provides legitimacy for the company as an independent legal subject through the principle of separate legal personality. Second, it ensures that legal relations between founders and third parties operate on the basis of a clear and reliable structure. When a company's formal structure fails to reflect substantive reality, substantive legal certainty is correspondingly weakened. This study shows convincingly that the requirement of two founders under the Company Law has increasingly lost its normative foundation and functional justification, as it no longer aligns with developments in modern business practice. Indeed, empirical findings indicate that the requirement has encouraged dishonest practices such as the use of nominees, simulated ownership, and formal structures that do not reflect the company's substantive condition. This occurs because the rule weakens protection for minority shareholders and makes it difficult for them to seek compensation for self-dealing conduct that causes harm[11].

These conditions demonstrate that legal certainty cannot be achieved solely through the clear formulation of rules; it also requires the effectiveness of norms and the alignment of normative provisions with socio-economic realities. A norm that no longer corresponds to societal needs or business practice may create substantive uncertainty even if it remains formally valid. Accordingly, legal certainty in company formation

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[10] Sepriyadi Adhan S et al., "Legal Reformulation of Banking Consumer Protection: Building A Justice-Oriented Regulatory System," *LITIGASI* 26, no. 1 (2025): 546–64, https://doi.org/10.23969/litigasi.v26i1.19270.

[11] L. Enriques and Sergio Gilotta, "The Case Against a Special Regime for Intragroup Transactions," *European Business Organization Law Review* 24 (2023): 471–506, https://doi.org/10.1007/s40804-023-00285-3.

must be understood dynamically, with the capacity to adapt to changes in the business environment. Shifts in the global economic structure, particularly the rise of the digital economy and the growth of solo entrepreneurs, demand corporate regulation that is more responsive. In many jurisdictions, single-member legal entities have long been accepted through the single-member company or single-member LLC. These developments suggest that legal certainty does not lie in the number of founders, but in the integrity of the legal structure and the availability of oversight mechanisms. For that reason, the two-founder requirement maintained by the 2007 Company Law is no longer relevant to ensuring legal certainty. It is unable to prevent abuse of the corporate form and instead triggers concealment practices that can obscure the identity of the beneficial owner.

From the standpoint of legal theory, approaches to legal certainty must shift from a formalistic paradigm toward a substantive one that assesses whether a norm truly generates order, openness, and legal trust. This study indicates that the two-founder requirement, although historically understood as part of the partnership concept, does not fulfil the aims of legal certainty in the context of the LLC as a modern legal entity. By contrast, the Single-Member Company introduced through the Job Creation Law offers the possibility of a more transparent formalization of business, consistent with contemporary economic dynamics—provided that it is accompanied by adequate oversight mechanisms. In this sense, legal certainty provides a philosophical basis for reforming LLC formation. Such reform should not only remove ineffective historical formalities, but also ensure that regulatory innovations such as the Single-Member Company produce corporate structures that are honest, transparent, and accountable. Legal certainty, in other words, is not synonymous with preserving older provisions; it demands the renewal of norms when they no longer serve their substantive function within company law.

The Evolution of Legal Entity Theory and Its Relevance to LLC Founder Requirements

Legal entity theory plays a crucial role in understanding the nature of the company as an entity distinct from its founders. The conceptual review indicates that the evolution of legal entity theory provides a strong analytical basis for assessing the relevance of founder requirements in Indonesian company law. In its early stage, Artificial Entity Theory viewed the legal entity as a creation of the state, whose existence depends entirely on legal authority. Within this framework, the company is understood as an entity that comes into being through the conferral of authority by the state via a charter or deed of establishment. Real Entity Theory, pioneered by Otto von Gierke, holds that legal entities are real entities whose existence is acknowledged socially and legally. Von Gierke described legal entities (such as corporations) as "living organisms" with their own will, distinct from a mere aggregation of individuals. This theory emphasizes that an organization has an autonomous existence and can act independently of its members.[12] Under this perspective, the corporate entity is not simply a collection of individuals but an independent structure capable of making decisions and acting within legal relations.

A more modern approach, Nexus of Contracts Theory, conceives of the company as a network of contracts that structures relationships among stakeholders such as shareholders, directors, creditors, employees, and others. This theory focuses on organizational and coordination mechanisms rather than on the number of founders. The existence of the company is thus understood as a response to the need for transactional efficiency and reduced coordination costs. The emerging consensus in contemporary scholarship is that the number of founders is no longer an essential element for the existence of a legal entity. What is essential is the company's capacity to act as a legal subject, maintain a clear governance structure, separate personal and corporate assets, and provide reliable accountability mechanisms. For that reason, the two-founder requirement under the 2007

[12] Eva Micheler, "Corporate Rights and Obligations—the Perspective of Real Entity Theory," *Transnational Legal Theory*, ahead of print, 2025, https://doi.org/10.1080/20414005.2025.2496574.

Company Law lacks a strong theoretical justification within modern company law.

Modern doctrine accepts that a company may be formed by a single person, so long as mechanisms exist to ensure asset separation and accountable management. This is evidenced by many jurisdictions that have adopted the single-member company model, such as the United Kingdom, China, Malaysia, and EU Member States. These jurisdictions emphasize that the integrity of a legal entity is not determined by the number of founders, but by the governance mechanisms applied and the oversight framework established.

In Indonesia, this study shows that conceptions of legal entities still often remain trapped in a historical paradigm: the view that a company is a capital partnership requiring more than one individual to be established. That perspective is no longer relevant. As modern corporate structures develop, the two-founder provision instead inhibits innovation, adds administrative burdens, and encourages structural dishonesty. Modern legal entity theory thus strongly supports the view that LLC formation need not be restricted by founder-number requirements so long as basic principles, such as asset separation and limited liability, can be ensured.

Bibliometric results show that global discourse on corporate law is dominated by themes of corporates, corporate governance, shareholders, laws and legislation, and company law. The dominance of these clusters indicates that contemporary research has shifted from structural-formal questions such as the number of founders toward substantive issues relating to governance, shareholder relations, and legal protection frameworks for creditors and third parties. This finding strengthens the argument that modern legal entity theories, whether Real Entity Theory or Nexus of Contracts Theory, no longer place the number of founders at the core of legal entity existence. Instead, what is regarded as vital is the company's capacity to provide accountability mechanisms, asset separation, and an accountable governance structure. Accordingly, the two-founder requirement under the 2007 Company Law appears increasingly misaligned with global scholarly orientations that emphasize governance effectiveness and regulatory quality rather than formalistic constructs of company formation. The treemap results thus provide empirical grounding for the view that reconstructing LLC formation requirements in Indonesia should be directed toward strengthening governance and legal certainty, rather than preserving historical requirements that no longer have theoretical justification in modern scholarship.

The Normative Paradox of the Two-Founder Requirement in Empirical Practice

Article 7(1) of the 2007 Company Law, which requires an LLC to be established by at least two founders, was historically grounded in the understanding that the LLC is a capital partnership. This study shows, however, that the requirement generates a regulatory paradox: a situation in which a norm intended to create order instead produces disorder and legal uncertainty. Doctrinally, the two-founder requirement is supported by classical legal constructions that conceive of partnerships as contractual relations between individuals and therefore impossible to arise from a single subject. This reasoning aligns with the contract framework of the Civil Code. Yet developments in business practice demonstrate that the provision has been overtaken by the needs of modern business communities, which are often individual in character.

The findings indicate that the two-founder requirement is not only irrelevant but also counterproductive. Many business actors who in fact wish to establish a PT alone are compelled to use nominees or "placeholder" shareholders to satisfy the formal requirement. This practice produces fictitious ownership structures that do not reflect reality. In many cases, the sole founder prepares two instruments: a formal deed for the government and an internal agreement stating that one "founder" holds no economic rights or control whatsoever. As a result, the two-founder requirement does not generate internal oversight or risk distribution in the manner envisaged by lawmakers. This study reinforces that view by providing empirical evidence that the two-founder requirement becomes a source of structural dishonesty that undermines the integrity of company law. When formal structures fail to reflect substantive structures, legal certainty is disrupted. Creditors, business partners, and state authorities cannot rely on information in the deed of establishment to assess transactional risks. The requirement thus not only fails to protect third parties but places them in a more vulnerable position.

This normative paradox shows that a legal-formalist approach is no longer adequate. A norm is effective only when it corresponds with evolving social practice. When norms are not adaptive, compliance becomes symbolic rather than substantive. In the context of PT formation, the two-founder requirement has become a formal symbol without practical benefit. For that reason, this study recommends shifting the focus away from founder numbers and toward substantive mechanisms for third-party protection, transparency of beneficial ownership, and compliance oversight.

The Notary as Gatekeeper in the Establishment of Limited Liability Companies

The notary's role as a gatekeeper in the establishment of a Limited Liability Company (LLC) occupies a strategic position in the Indonesian legal system, as notaries are tasked with safeguarding the validity, legality, and authenticity of legal acts embodied in the deed of establishment. As public officials, notaries have the authority to verify the founders' identities, interpret and articulate their intentions in appropriate legal language, and ensure that the articles of association comply with applicable legislation, including the Company Law and the Legal Entity Administration System (SABH). Notarial scholarship emphasizes the fulfilment of all formal and material requirements of the deed in accordance with statutory provisions[13]. Empirical findings reinforce this role, showing that notaries act not merely as recorders but as guardians of legal compliance in LLC formation, including the fulfilment of formal and material requirements, the validity of capital, ownership composition, and conformity with investment and licensing regimes[14]. In recent developments, the gatekeeper function has

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[13] Ika Yuli Agustin and Ghansham Anand, "Proposing Notaries' Deed Digitalization in Indonesia: A Legal Perspective," *Lentera Hukum*, ahead of print, 2021, https://doi.org/10.19184/ejlh.v8i1.21375.

[14] Siti Fauziah Dian Novita Sari, "Peran Notaris Dalam Proses Pembuatan Akta Pendirian Perseroan Terbatas," *Lex Renaissance* 3, no. 2 (2018): 407–22, https://doi.org/10.20885/jlr.vol3.iss2.art10; Fitri Anggraini et al., "Analisis Yuridis Peran

gained added prominence through the obligation for notaries to apply beneficial ownership identification principles, which vary across jurisdictions and thereby open interpretive space and potential reporting avoidance, for example, by dividing ownership to remain below reporting thresholds[15]. The notary thus functions as the first layer of control over the integrity of corporate formation structures, ensuring that an LLC comes into being as a lawful, transparent legal subject consistent with principles of good corporate governance.

Notarial involvement provides an important layer of protection for founders, minority shareholders, and third parties. When a deed is authenticated by a notary, there is assurance that the corporate structure has undergone an adequate process of formal review. In practice, the presence of a notary also helps reduce the risk of internal disputes because notaries provide legal counselling on the rights and obligations of the founders.

The Job Creation Law, however, introduced a Single-Member Company scheme that does not require an authentic notarial deed. Formation is sufficient through a statement of establishment. This step lowers costs and increases accessibility for MSMEs. Yet this study shows that the absence of a notary raises several serious challenges for legal certainty. *First*, the lack of independent verification increases the risk of material errors in formation documents. MSME actors often do not understand the legal implications of capital structure, the description of business activities, or rules on the allocation of authority. Such errors may trigger disputes in the future. *Second*, the absence of the notary's role eliminates a legal counselling function that is essential in helping founders understand asset separation, the principles of good corporate governance, and corporate legal obligations. Without such guidance, founders may commingle personal and corporate assets, ultimately eroding the function of limited liability. *Third*, third parties transacting with a Single-Member

Notaris Dalam Pembuatan Akta Pendirian Perseroan Terbatas Berbasis Penanaman Modal Asing: Studi Kasus Kantor Notaris Wilayah Kota Batam," *Unes Journal of Swara Justisia* 8, no. 2 (2024): 373–78, https://doi.org/10.31933/qrnfwx98.

15 M. Konovalova et al., "In Search of the Owner: Regulating through Transparency," *Critical Perspectives on Accounting*, ahead of print, 2022, https://doi.org/10.1016/j.cpa.2022.102421.

Company no longer have assurance that formation documents have been verified to adequate legal standards. This increases the due diligence burden for creditors and business partners.

Accordingly, although notarial involvement is no longer mandatory, this study underscores the importance of developing technology-based administrative oversight mechanisms capable of substituting part of the notary's verification function. Systems such as OSS need to be strengthened to ensure that founders' data are verified through credible methods. Without robust substitute mechanisms, the absence of the notary may weaken legal protection and create opportunities for opportunistic conduct among business actors.

International Comparisons of Single-Member Companies and Their Relevance for Indonesia

Comparative international studies show that single-shareholder companies, or single-member companies (SMCs), are not a new concept. Many countries have adopted single-member forms in response to demands for flexibility, technological adaptation, and the rise of independent entrepreneurs. Comparative analysis indicates that SMCs have long been recognized across diverse legal systems. In the European Union, Directive 2009/102/EC specifically regulates SMCs with an emphasis on transparency of ownership identity, documentation of decisions, and creditor protection. This transparency aims to reduce the risk of abuse of SMC structures, such as money laundering or tax avoidance, and to strengthen stakeholder trust[16]. European Member States recognize that the number of founders has no direct relationship to corporate risk and therefore need not be retained as an essential requirement.

The United Kingdom, through the Companies Act 2006, does not differentiate between multi-founder and single-member limited companies except in certain systemically risky sectors such as banking and insurance. Most UK companies are small and private, and UK company law tends to

[16] Andreja Primec and Jernej Belak, "Sustainable CSR: Legal and Managerial Demands of the New EU Legislation (CSRD) for the Future Corporate Governance Practices," *Sustainability*, ahead of print, 2022, https://doi.org/10.3390/su142416648.

"think small first," in the sense that regulation is designed to facilitate the formation and management of small companies without distinguishing founder numbers[17].

China regulates SMCs through the Single Person Limited Liability Company, imposing a limitation that one individual may own only one single-person company. This limitation is intended to prevent abuse of the corporate form for unhealthy risk partitioning or regulatory arbitrage. Even so, China recognizes the single-member legal entity as lawful and effective. Owners are also required to appoint a nominee who will act if the owner dies or becomes unable to run the company.[18]

In the United States, flexibility is even greater. Most states recognize the single-member limited liability company (LLC), and some even recognize memberless LLCs or shelf LLCs. This indicates that modern legal systems focus on internal oversight mechanisms and administrative compliance rather than on founder numbers. This aligns with global developments in which other countries are beginning to adopt similar approaches, emphasizing transparency, reporting, and internal oversight as the principal pillars of corporate governance[19]. In Southeast Asia, Malaysia and Singapore adopt an approach akin to the United Kingdom, allowing SMCs to be established without minimum capital requirements. This accelerates the formalization of business and creates a more competitive business ecosystem.

From these comparisons, several lessons are salient for Indonesia:

1. The number of founders does not determine the quality of corporate governance.
2. Transparency of beneficial ownership is a universal requirement to prevent abuse of legal entities.

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[17] Jonathan Hardman and Guillem Ramírez Santos, "Empirical Evidence for the Continuing Need to 'Think Small First' in UK Company Law," *European Business Organization Law Review* 24 (2022): 117–65, https://doi.org/10.1007/s40804-022-00258-y.

[18] Salah Mohameed Almasabi et al., "One Person Company in Asia and Europe: A Comparative Study," *UUM Journal of Legal Studies* 14, no. 2 (2023): 607–31, https://doi.org/10.32890/uumjls2023.14.2.8.

[19] Oliver Henk, "Internal Control through the Lens of Institutional Work: A Systematic Literature Review," *Journal of Management Control*, 2020, 1–35, https://doi.org/10.1007/s00187-020-00301-4.

3. Decision documentation is crucial in the Limited Liability Company to avoid internal disputes.
4. Creditor protection and periodic reporting are core mechanisms for maintaining SMC accountability.
5. Sectoral restrictions may be applied to secure high-risk sectors.

In conclusion, Indonesia is not outside the global trend in adopting the Single-Member Company. Yet Indonesia's approach is more extreme in removing the notarial deed without adequately replacing its verification function. Indonesian company law therefore requires stronger electronic verification procedures and reporting obligations to ensure that the Single-Member Company is not misused as a vehicle for identity concealment or evasion of legal responsibility.

Formalizing MSMEs through the Single-Member Company and Implementation Challenges for Legal Certainty

MSMEs are the backbone of the Indonesian economy, yet the majority still operate informally. This condition limits their access to bank financing, legal protection, government facilities, and opportunities for business expansion. For that reason, the formalization of MSMEs has become a strategic national agenda closely linked to the goals of inclusive economic development. Strengthening legality through the establishment of legal entities is one mechanism that can enable MSMEs to "move up" in a systematic manner.

The Single-Member Company introduced through the Job Creation Law is a significant innovation in Indonesian company law reform. It's simple, low-cost, digitally based formation mechanism, without a notarial deed, was designed to remove barriers for MSME actors entering the formal sector. Normatively, this model enables MSMEs to obtain legal entity status with limited liability protection that was previously difficult to access.

This study shows, however, that the effectiveness of the Single-Member Company in promoting MSME formalization depends on several critical factors. First, legal literacy among MSME actors remains very low. Many do not understand that establishing a Single-Member Company carries important legal consequences, including asset separation and liability, administrative obligations, and the use of separate accounts. This lack of awareness may lead to commingling of personal and corporate assets, weakening separate legal personality and opening space for legal disputes.

Second, the Single-Member Company carries a high risk of abuse. Without notarial verification, formation documents depend heavily on the founder's honesty. This creates space for illegal practices such as money laundering, fraud, or tax evasion. The absence of periodic reporting mechanisms exacerbates this risk, as Single-Member Companies have no obligation to disclose their economic condition to the government or the public.

Third, the OSS system, which serves as the backbone of Single-Member Company formation, does not yet provide verification mechanisms equivalent to the notary's function. As a result, incorrect data entry, identity misuse, or document completion without legal understanding may occur on a large scale. This study emphasizes that regulatory simplification without strengthened digital oversight can create a legal vacuum that harms business actors and third parties.

Fourth, creditors and business partners are placed in a more vulnerable position in dealings with Single-Member Companies. Without financial reporting obligations, creditors struggle to assess transactional risk. This may lead to financing refusals or higher risk premiums. In international practice, countries that adopt SMCs require periodic reporting and documentation of sole-owner decisions to reduce such risks. Indonesia, by contrast, does not yet have comparable administrative oversight mechanisms.

In efforts to strengthen MSME governance, the Single-Member Company should be integrated with legal education programs and basic financial management training. Without adequate understanding, MSME actors may fail to recognize that PT status entails enduring legal consequences rather than mere administrative formality. For that reason, this study stresses that the Single-Member Company, while a progressive breakthrough, must be supported by legal assistance mechanisms and additional regulation to ensure legal certainty and prevent abuse of the corporate form.

Maslahah-Based Legal Certainty as an Ethical Framework for Reforming Limited Liability Company Formation

This study makes an important theoretical contribution by incorporating the principle of *maslahah* as an ethical framework in the analysis of company law. *Maslahah* holds that legal policy should produce benefit and prevent harm or public loss. Within the framework of maqāṣid al-sharīʿah, the protection of property (ḥifẓ al-māl), life (ḥifẓ al-nafs), intellect (ḥifẓ al-ʿaql), and social order constitutes a central aim in the formulation of legal norms.

Applied to Limited Liability Company (LLC) formation, *maslahah* provides guidance that regulation should protect founders' assets while ensuring that third parties such as creditors are not harmed. The ineffective two-founder requirement fails to satisfy *maslahah* because it produces simulated practices, structural dishonesty, and vulnerability to abuse. The norm does not provide real protection for property or the public interest. For that reason, the application of *maslahah* supports revising the two-founder requirement and endorses the emergence of the Single-Member Company as a model more consistent with the needs and realities of modern business communities.

Maslahah also insists, however, that ease of formation must be balanced with mechanisms for public protection. Simplification through the Single-Member Company can be regarded as *maslahah* only if instruments exist to ensure that such facilitation does not produce harm in the form of corporate abuse, creditor losses, or contractual breaches. This study finds that *maslahah* requires strengthened governance mechanisms for the Single-Member Company, including obligations of beneficial ownership transparency, reliable administrative verification, periodic reporting on business conditions, the imposition of limits for certain business sectors, and strict sanctions against any form of misuse, so that its existence truly aligns with the aims of public benefit.

Accordingly, this study argues that Indonesian company law reform must proceed within an integrative framework that combines utility (maslahah), legal certainty, justice, and regulatory effectiveness. *Maslahah* helps ensure that legal simplification does not sacrifice principles of public protection.

Indonesian Company Law Reform: An Integrative and Multidimensional Approach

Based on the findings, the direction of Indonesian company law reform should adopt an integrative approach that combines procedural flexibility with strengthened substantive oversight mechanisms. Reforming PT formation should not end with the removal of the two-founder requirement; it must also build a firm legal foundation to ensure that PTs created through simplified procedures retain high integrity and accountability;

First, Indonesia needs to develop an electronic verification system capable of substituting parts of the notary's function. The OSS system should be expanded with identity authentication algorithms and document verification features. Automated verification based on the national identity number (NIK), taxpayer identification number (NPWP), and registered phone numbers can reduce the risk of identity misuse. The government can also integrate a self-reporting system for Single-Member Companies that includes basic information on turnover, assets, liabilities, and other operational details relevant to third parties. *Second*, Indonesia needs to establish a beneficial ownership registry for Single-Member Companies. Such a registry is an international standard for preventing financial crime, money laundering, and regulatory arbitrage. With beneficial ownership transparency, creditors and regulators can assess corporate risk more accurately. *Third*, periodic reporting should be established as a minimum obligation for Single-Member Companies, even within a simplified scheme. Reporting need not be as complex as the annual reports of ordinary LLCs, but it should contain information important for creditors and business partners. Periodic reporting can also strengthen governance discipline among MSMEs. *Fourth*, certain high-risk sectors should be excluded from the Single-Member Company model. This approach is consistent with practice in the United Kingdom and elsewhere. Sectors such as banking, fintech, insurance, and public fund management should remain subject to stricter regulatory regimes. *Fifth*, the government should require mandatory legal education for founders of Single-Member Companies. This is necessary to ensure that MSME actors understand the legal consequences of LLC status, including asset separation and limited liability.

Accordingly, this study concludes that the trajectory of Indonesian company law reform must shift from a formalistic paradigm toward a paradigm of substantive legal certainty that emphasizes the integrity of corporate structures, transparency, and third-party protection.

Based on a comprehensive analysis from normative, theoretical, empirical, and comparative perspectives, this study offers an academic synthesis that demonstrates the urgency of reforming PT formation in Indonesia. The synthesis shows that developments in the economy, technology, and modern business patterns have created a mismatch between the needs of the business community and the existing company law framework. In this context, legal certainty, legal entity theory, and the principle of maslahah function as three complementary analytical pillars for constructing a framework of company law renewal that is responsive, adaptive, and oriented toward public benefit:

First, legal certainty requires that norms align with reality and provide predictability and protection for interested parties. The two-founder requirement under the 2007 Company Law is no longer aligned with modern business practice. It has proven not only ineffective but also a primary cause of structural dishonesty through nominee practices and simulated ownership. This disrupts substantive legal certainty because the company's formal structure cannot reflect its actual control structure. Legal certainty thus requires removing the two-founder requirement and developing alternative formation mechanisms such as the Single-Member Company.

Second, legal entity theory provides theoretical legitimacy for PT formation by a single person. As reflected in Real Entity Theory and Nexus of Contracts Theory, the company is no longer understood as a capital partnership but as an independent entity with legal capacity. The number of founders is not constitutive of legal personality. Instead, governance mechanisms and oversight structures are the elements that must be safeguarded. Accordingly, from a theoretical standpoint, PT formation requirements should focus on fulfilling principles of asset separation, limited liability, and corporate organs, rather than on founder numbers.

Third, maslahah provides an ethical framework directing company law reform toward public benefit and the prevention of social harm. Maslahah requires that PT formation regulation protect business actors, creditors, and the wider community from abuse while facilitating public participation in economic life. The two-founder requirement has been shown to generate harm (maḍarrah), while the Single-Member Company offers substantial benefits for MSMEs, provided that oversight mechanisms are strengthened. Maslahah thus supports restructuring Indonesian company law to be more adaptive, more just, and aligned with the aims of inclusive economic development.

The integration of these three pillars confirms that PT formation reform is not merely an administrative need but a paradigmatic one. Indonesian company law must move from a formalistic paradigm toward a substantive paradigm focused on the integrity of legal structures, transparency, accountability, and public protection. The findings of this study carry important policy implications for the formulation and implementation of company law in Indonesia. The following recommendations are developed through a combination of theoretical approaches, normative analysis, and international comparison.

Strengthening governance of the Single-Member Company requires far more reliable technology-based administrative verification mechanisms. The OSS system should be equipped with risk-detection algorithms, NIK–NPWP identity verification, and data audits as substitutes for the notary's verification function. These measures are necessary to prevent misuse of the Single-Member Company for illegal purposes. The government also needs to establish a beneficial ownership registry to ensure transparency of beneficial owners in line with international standards. Accurate beneficial ownership reporting is required to safeguard transactional integrity and creditor protection. At the same time, periodic reporting must remain obligatory even though the Single-Member Company is designed to be simple. Such reporting enables the government to monitor the company's condition and encourages governance discipline among MSME actors.

Sectoral restrictions for Single-Member Companies should be implemented so that these entities do not operate in high-risk sectors such as banking, fintech, insurance, and public fund management. The aim is to prevent systemic risks that may arise from misuse of simplified legal entities. In addition, the government should require brief mandatory legal education before a Single-Member Company is recognized as valid. This education is essential to ensure founders' understanding of asset separation, limited liability, and corporate governance. Given persistently low levels of legal literacy, such education becomes a protective instrument for MSME actors. All these policies must also be supported by strong inter-regulatory coordination. Cooperation among the Ministry of Law and Human Rights, the Financial Services Authority (OJK), the Ministry of Finance, the Directorate General of Taxes, and notaries is necessary to prevent misuse of the Single-Member Company as a vehicle for money laundering or tax avoidance.

With these recommendations, LLC formation reform can proceed in line with the objective of creating an inclusive, secure, and competitive business ecosystem. Overall, this study concludes that the LLC formation system in Indonesia is in a transitional phase toward a new paradigm. The introduction of the Single-Member Company is a strategic step toward modernizing company law and widening access to business formalization. Even so, simplified formation procedures must be accompanied by strengthened oversight mechanisms to ensure the integrity of corporate legal structures.

The two-founder requirement under the 2007 Company Law is no longer relevant in the context of modern enterprise. It has been shown to generate structural dishonesty, harm third parties, and weaken legal certainty. Contemporary legal entity theory provides theoretical support for the view that a company may exist with a single founder without losing its function or legal legitimacy. The principle of *maslahah*, meanwhile, teaches that law must bring tangible benefit to society, including MSME actors, while preventing potential abuse. Through the combined measures outlined above, Indonesian company law can move toward a more modern, adaptive, and just system. This reform is not only about administrative efficiency, but about building a long-term foundation for a nationally competitive economy that is inclusive and legally resilient.

Conclusion

This conclusion summarizes the main findings derived from the normative-juridical analysis, articulating clear responses to the research questions while highlighting the core line of argument developed throughout the study. The analysis identifies points of consistency, mismatch, and normative gaps within the examined legal framework, and clarifies the logical implications of comparing various regulations, doctrines, and legal principles. Overall, the study provides a more structured understanding of the position of the relevant norms, the objectives of the legislature, and the regulatory rationales within the issues under discussion. This study contributes to the development of legal scholarship by affirming key concepts, mapping normative problems, and offering a more systematic framework for understanding the relationship between norms, principles, and implementation practices. The comparative analysis and deductive reasoning employed enrich the theoretical discourse and clarify legal principles that have long been contested. These findings provide an argumentative basis for regulatory harmonization, the strengthening of legal certainty, and the refinement of relevant juridical concepts for policymakers and scholars.

In addition, the study carries practical implications by offering normative recommendations that may be used by legislators, law enforcers, and other stakeholders to improve the existing regulatory framework. Nevertheless, the study is limited in scope, particularly due to its reliance on the availability of the regulations and literature examined and its exclusion of empirical data. Further research is therefore recommended to broaden the analysis through socio-legal approaches, implementation studies, and evaluations of normative effectiveness, to produce a more comprehensive and applicable legal account.

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