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COMPARATIVE REVIEW OF THE PRACTICES OF SOLE PROPRIETORSHIP COMPANY SUPERVISION MECHANISM

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Abstract

A sole proprietorship is a unique form of Limited Liability Company (Perseroan Terbatas) which has a legal status under Indonesian law. The aspect of supervision is important as a consequence of the rights and obligations carried out by the sole proprietorship. This study aims to examine the comparison of the supervisory mechanism of sole proprietorship in Indonesia with the European Union, China, Germany, France, and the United Kingdom. This study uses normative research methodology. The results of the study show that, first, the supervisory mechanism in a sole proprietorship company and a limited liability company has a significant difference in the internal control in which the sole proprietorship is lacking, while the limited liability company has effective internal control by a General Meeting of Shareholders forum. In addition, the form of supervision on individual companies is less different than the form of supervision on Limited Liability Company. This difference is due to the initial purpose of establishing a sole proprietorship in Indonesia which is intended to provide ease of doing business, hence the supervision aspect is not taken into account too much. Second, the comparison of individual monitoring mechanisms in the European Union, China, Germany, France, and the United Kingdom with the Indonesian practice generally has similarities in that each country does not have an effective internal control mechanism. However, each country provides an external monitoring mechanism for individual companies with different forms of implementation. The unavailability of internal control is caused by the requirements for the establishment of a company that can be established by one person. Hence, it does not allow for effective internal control. As for the availability of an external supervisory mechanism for the company as a consequence of implementing the principles of Good Corporate Governance to prevent misuse of individual companies.

Keywords: *Good Corporate Governance, Limited Liability Company, Sole Proprietorship.*

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A. Introduction

The development of the national economy is strongly influenced by the ease of doing business. The ease of doing business will provide a stimulus for business actors to start and run their business. On the other hand, Canare (2018) mentions barriers to starting a business for the private sector such as lengthy licensing procedures and high costs that indirectly affect economic growth.[2] Many micro and small business actors are reluctant to start a business due to access to permits and business requirements which are relatively expensive, complicated and time-consuming. Meanwhile, business actors always adhere to the principle of low costs for maximum profit.

The problem of ease of doing business always harms economic growth, and Indonesia is no exception. Word Bank (2020) - in Digdowiseiso (2021) - noted that Indonesia still ranks 73rd out of 190 countries for the ease of doing business or *EoDB*.[3] Based on this data, Indonesia is far behind other Southeast Asian countries such as Singapore, Malaysia, Thailand, and Vietnam.[4] The time required to apply for a business establishment permit in Indonesia takes 30-31 days, while in Singapore it is only 5 days to process, in Thailand needs 9 days, and in Malaysia needs 12 days to issue the legal permit.[5]

In 2020, the Government of Indonesia issued a policy of streamlining licensing for ease of doing business for small and micro business actors through Law No. 11 of 2020 concerning Job Creation by establishing a sole proprietorship company.[6] Sole proprietorship is a legal entity that caters to micro and small businesses and is founded by one person. [7]Unlike a limited liability company in general, a sole proprietorship can be established by one person based on a statement made in the Indonesian language[8] and without going

[2] Tristan Canare, 'The Effect of Ease of Doing Business on Firm Creation' (2018) 19 Annals of Economics and Finance 555, 556; Azizah, *Hukum Perseroan Terbatas* (Setara Press 2016).

[3] Kumba Digdowiseiso and Eko Sugiyanto, 'How Effective Is Institutional Quality for the Creation of Small & Medium Enterprises (SMEs) in Indonesia?' (2021) 14 Economics & Sociology 263, 264; Muhammad Teguh Pangestu, *Badan Usaha Milik Negara dan Status Hukum Kekayaan Negara: Berdasarkan UU BUMN* (CV Social Politic Genius (SIGn)).

[4] Digdowiseiso and Sugiyanto (n 3).

[5] 'Time Required to Register Property (Days) - Indonesia, Singapore, Malaysia, Thailand' (*World Bank Open Data*, 2022) <https://data.worldbank.org> accessed 8 October 2023.

[6] Wiwin Budi Pratiwi, 'Individual Companies as New Legal Entities in Law Number 11 of 2020 on Job Creation' (2021) 4 Nurani Hukum 9 <https://jurnal.untirta.ac.id/index.php/nhk/article/view/11266> accessed 7 February 2024; Yaya Mulyana Abdul Aziz and others, *Pedoman Kemudahan Berusaha Bagi Pelaku UMKM: Pasca Dikeluarkannya UU No. 11/2020 Tentang Cipta Kerja* (1st edn, LEMLIT Press Universitas Pasundan 2021).

[7] Law No. 40 of 2007 on Limited Liability Companies on the Amendment of Law Number 11 of 2020 on Job Creation. Art 1 (1).

[8] Law No. 11 of 2020 on Job Creation. Art 153 (a).

through a notarial deed. To support the ease of establishment, the government provides relief from the cost of establishing a legal entity as a sole proprietorship.[9] According to micro and small business actors, the process of making a Sole Proprietorship only takes 2-3 days and costs Rp. 50,000 (Fifty Thousand Rupiah) to be registered as a legal entity at the Ministry of Law and Human Rights.[10]

Miao (2012) said that the sole proprietorship model is a unique form of Limited Liability Company as a consequence of the rapid development of the economy and the pluralism of business practices in everyday life. The sole proprietorship only has one shareholder. This means that all share ownership in the company is held by one shareholder.[11] In a Limited Liability Company, the General Meeting of Shareholders[12], the Board of Directors[13], and the Board of Commissioners[14] consisting of at least one person, then in a sole proprietorship company the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners are held by only one person.

The aspect of supervision of individual companies (or sole proprietorship) is important to ensure that the company is not misused. Even in the concept of the rule of law, Adrian Bedner (2010) considers the control mechanism to be one of the main indicators to make sure legal certainty for the business entity. On the other hand, supervision is important to implement the principles of Good Corporate Governance. The principle of Good Corporate Governance must exist in the management of a company. Adebayo, *et al*. (2014) states that the success of a national economy is strongly influenced by the existence of good corporate *governance*. [15] Likewise, what Michelberger (2016) mentions that several studies[16] show

[9] Law No. 11 of 2020 on Job Creation. (n 8) Art 153 (i) Paragraph (1).

[10] Recognition of several micro and small business actors who registered their businesses with private companies in Makassar in February 2022.

[11] This form of Sole Proprietorship was implemented in China in 2006, long before it was implemented in Indonesia in 2020. See Beihui Miao, 'A Comparative Study of Legal Framework for Single Member Company in European Union and China' (2012) 5 Journal of Politics and Law p1 <http://www.ccsenet.org/journal/index.php/jpl/article/view/19898> accessed 7 February 2024; Tuti Rastuti, *Seluk Beluk Perusahaan & Hukum Perusahaan* (Refika Aditama 2015).

[12] The arrangement of the General Meeting of Shareholders (GMS) is regulated in Law No. 40 of 2007 on Limited Liability Companies. Art (75-91).

[13] The arrangement of the Board of Directors is regulated in Law No. 40 of 2007 on Limited Liability Companies. Art (92-107).

[14] The arrangement of the Board of Commissioners is regulated in Law No. 40 of 2007 on Limited Liability Companies. Art (108-121).

[15] Mudashiru Adebayo and others, 'Good Corporate Governance and Organisational Performance: An Empirical Analysis' (2014) 4 International Journal of Humanities and Social Science 170 <https://www.ijhssnet.com/journals/Vol_4_No_7_1_May_2014/22.pdf>.

[16] The research referred to include Jensen in 1986; Herma Lin, Weisbach 1991; Byrd, Hickman 1992; Lipton, Lorsch Tahub 1992; Jensen 1993; Brickley, Coles, Terry, 1994; Shleifer, Vishny, 1997; and Eisenberg, Sundgren, Wells, 1998., in Knut Michelberger, 'Corporate Governance Effects on Firm Performance: A

companies with good implementation of Good Corporate Governance will have long-term performance and better business results. [17]According to Word Bank (2006) - in Apadore (2014) - Good Corporate Governance is a principle to control the company both internally and externally.[18] Meanwhile, according to Aspan (2017) Good Corporate Governance is a principle and guideline in managing a company.[19]

Relevant to this, the implementation of Good Corporate Governance through effective supervision will contribute to the success of individual companies. In this case, supervision is carried out as a consequence of the licensing issued by the government regarding the status of legal entity status for individual companies. The status of the legal entity has a position that can carry rights and obligations. If an effective supervisory mechanism is not enforced, the potential for abuse of the company will be very large. Therefore, a comparative study of the supervisory mechanism of the sole proprietorship is important to explore in depth the supervisory mechanism in the sole proprietorship with the supervisory mechanism in the Limited Liability Company as companies with the same status as legal entities. In addition, this study is important to understand the broad comparison of supervisory mechanisms for individual companies in several countries such as the European Union, China, Germany, France, and the United Kingdom.

B. Methodology

Based on the above background, legal problems that could be identified and analyzed are: first, what are the differences in supervisory mechanisms for a sole proprietorship with a limited liability company as a legal entity? Second, what is the supervisory mechanism for Sole Proprietorships in several countries such as the European Union, China, Germany, France, and the United Kingdom?

Literature Review' [2021] Regional Formation and Development Studies 84 <https://e-journals.ku.lt/doi/10.15181/rfds.v20i3.1346> accessed 7 February 2024.

[17] Michelberger (n 16).

[18] Kogilavani Apadore and Siti Subaryani Binti Zainol, 'Determinants of Corporate Governance and Corporate Performance among Consumer Product Industry in Malaysia: A Theoretical Model' (2014) 4 International Journal of Academic Research in Accounting Finance and Management Sciences 201 <https://hrmars.com/papers_submitted/836/determinants-of-corporate-governance-and-corporate-performance-among-consumer-product-industry-in-malaysia-a-theoretical-model.pdf>; Zaeni Asyhadie, *Hukum Bisnis: Prinsip Dan Pelaksanaannya Di Indonesia* (Revised, Rajawali Pers 2016).

[19] Henry Aspan, 'Good Corporate Governance Principles In The Management Of Limited Liability Company' (2017) 1 International Journal of Law Reconstruction 87 <http://jurnal.unissula.ac.id/index.php/lawreconstruction/article/view/1637> accessed 7 February 2024; Rudhi Prasetya, *Perseroan Terbatas: Teori Dan Praktik* (Cet 1, Sinar Grafika 2016).

This research uses a normative research method with a systematic literature review type of research. The approaches used include a conceptual approach, a statutory approach, and a comparative approach. The conceptual approach includes the concept of Good Corporate Governance, the concept of sole proprietorship, and the concept of supervision in the study of state administrative law. Legislative approaches include: Law No. 11 of 2020 concerning Job Creation, Law No. 40 of 2007 concerning Limited Liability Companies, and Government Regulation No. 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Business Micro and Small Companies. The comparative approach is carried out through a comparison of the supervisory mechanism between individual companies and Limited Liability Companies within the scope of Indonesia. The reason for choosing this comparison is that between a sole proprietorship company and a limited liability company, each has the status of a legal entity. This study also compares the existence of sole proprietorship in several countries, especially in the European Union, China, Germany, France, and the United Kingdom regarding the form of supervision of individual companies. The reason for choosing the country as the object of comparison is because the five countries have long implemented sole proprietorship (Single Member Corporate). Sources of data include secondary materials in the form of legislation and journals. All materials are collected and analyzed analytically and descriptively to produce solutions to the identification problems that have been proposed.

C. Discussion and Results

1. Good Corporate Governance

Currently principles of good corporate governance provide an obligation for companies to run their business by the principles of accountability, transparency, and accountability. Several experts reveal the urgency of good corporate governance for companies. O'Sullivan - in Cornelius and Kogut (2003) - assessed that the practice of good corporate governance will influence and improve the company's capabilities. According to him, this is because the company as a "learning organization" with competitive activities is in dire need of good corporate governance.[20] McConvil (2005)

[20] Peter Cornelius and Bruce Kogut, 'Creating the Responsible Firm: In Search for a New Corporate Governance Paradigm' (2003) 4 German Law Journal 45 <https://www.cambridge.org/core/product/identifier/S207183220001573X/type/journal_article> accessed 7 February 2024; M Yahya Harahap, *Hukum Perseroan Terbatas* (1st edn, Sinar Grafika 2015).

states that the practice of good corporate governance has an urgency to align the interests of management with the interests of shareholders. According to him, this will trigger effective management of the company's behavior.[21]

The importance of good corporate governance through a supervisory mechanism is also expressed by Latif, *et al*. In Appadore and Subaryani (2014) - according to him, this principle has a significant effect on company performance.[22] Likewise, it was mentioned by Rashid and Lodh (2014) that the implementation of Good Corporate Governance is a determinant of efficient company performance.[23] Sheikh, *et al.* (2014) suggested that the implementation of good corporate governance internally (Board of Commissioners, Shareholders, and Commisiners) will improve company performance.[24]

Adebayo et al, (2014) reveal good corporate governance with an effective supervisory mechanism has an urgency to ensure managers do not abuse capital or invest in bad projects. Good Corporate Governance provides meaning to theft prevention that can be carried out by managers or the Board of Commissioners.[25] Research conducted by Michelberger (2016) by reviewing several studies also concludes that the implementation of good corporate governance in various countries has a positive impact on the financial performance of a company.[26]

2. Comparison of Supervision of Limited Liability Companies in Indonesia

Sole Proprietorship is a form of Limited Liability Company which is regulated in Law No. 40 of 2020 concerning Job Creation. In the general provisions of Law No. 40 of 2020, it is stated "Limited Liability Company, hereinafter referred to as Company, is a legal entity which is a capital alliance, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or individual Legal Entities that meet the criteria for Micro and Small Businesses. In this sense, it is clear that there are 2 (two) types of limited liability company, such as: a company in the form of a legal entity which is a capital partnership, established based on

[21] James McConvill, 'Positive Corporate Governance and Its Implications for Executive Compensation' (2005) 6 German Law Journal 1777 <https://www.cambridge.org/core/product/identifier/S2071832200004314/type/journal_article> accessed 7 February 2024; Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia* (1st edn, FH UII Press 2013); Kurniawan, *Hukum Perusahaan: Karakteristik Badan Usaha Berbadan Hukum Dan Tidak Berbadan Hukum Di Indonesia* (1st edn, Genta Publishing 2014).

[22] Apadore and Zainol (n 18) 160.

[23] Apadore and Zainol (n 18).

[24] Apadore and Zainol (n 18).

[25] Adebayo and others (n 15) 171.

[26] Michelberger (n 16) 90.

an agreement (more than 1 person), and a company as a legal entity established by individuals that fulfill to micro and small businesses. However, to facilitate this study, the author uses the term limited liability company for the first type of company, and sole proprietorship for the second type of company.

The difference between the two forms of the company lies in the number of shareholders/founders and the scale of the business being run. The similarities between the two forms of the company are legal entities and both are types of limited liability companies. The similarity between a sole proprietorship and a limited liability company is the author's argument for looking at the supervisory mechanism for the two companies. Adrian Bedner (2010) argues that one indicator of the rule of law is that there is a control mechanism for the implementation of relations between the state and society.[27] In this case, the sole proprietorship company and limited liability company have a relationship with the state, namely in the licensing granted to the company in its position as a legal entity.

The concept of supervision according to Rose (2000) ensures the protection of the community through the identification of risks to individuals, lives, and an area. According to him, supervision does not only limit individuals from deviations but also allows for the calculation of the impact of these deviations.[28] In the study of state administrative law, it is known that there are types of supervision including direct and indirect supervision, internal supervision, and external supervision. The three types of supervision will be used as indicators in differentiating the supervisory mechanism in sole proprietorship companies.

a. Direct and Indirect Supervision

The form of supervision of limited liability company as regulated in Law No 40 of 2007 has direct supervision that is carried out by the company's organ. The supervision is carried out by the shareholders in a forum of the General Meeting of

[27] Adriaan Bedner, ‘An Elementary Approach to the Rule of Law’ (2010) 2 Hague Journal on the Rule of Law 48 <http://www.journals.cambridge.org/abstract_S1876404510100037> accessed 7 February 2024; I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum / I Made Pasek Diantha* (Prenada Media Group 2016).

[28] N Rose, ‘Government and Control’ (2000) 40 British Journal of Criminology 321 <https://academic.oup.com/bjc/article-lookup/doi/10.1093/bjc/40.2.321> accessed 7 February 2024; Susanti Adi Nugroho, *Hukum Persaingan Usaha di Indonesia Dalam Teori dan Praktik Serta Penerapan Hukumnya* (1st edn, Kencana 2012).

Shareholders. In this forum, all policies carried out by the Board of Directors and the Board of Commissioners can be monitored.

In contrast to sole proper companies, direct supervision is carried out by the minister in charge of cooperative affairs and small and medium enterprises. Law No. 11 of 2020 concerning Job Creation stipulates that there is a form of direct supervision of corporate companies through the obligation for directors to submit financial reports. The financial report is submitted to the minister in periodically basis.

In addition to direct supervision, the provisions of Law No. 40 of 2007 concerning Limited Liability Companies also regulates the form of indirect supervision. The supervision is carried out by shareholders, certain parties and the prosecutor's office for reasons of certain interests as regulated in Article 138 paragraph (3) of Law No. 40 of 2007. This supervision shows that there is room for certain parties to participate in supervising limited liability company. If there are indications of unlawful acts committed by the company, certain parties can actively request an examination of the Law No. 40 of 2007.

In contrast to the sole proprietorship, which does not recognize any form of indirect supervision through community participation. Law No. 11 of 2020 concerning Job Creation does not stipulate the participation of certain parties to carry out indirect supervision in the form of reporting to the relevant ministers. The community does not have a reporting mechanism for violations of business activities carried out by the company. This makes it impossible for corporate accountability through public reports to be pursued.

b. Internal monitoring

The provisions of Law No. 40 of 2007 implicitly regulate the existence of an internal control mechanism for Limited Liability Companies through the full authority possessed by Shareholders in the General Meeting of Shareholders forum. Article 75 paragraph (1) of Law No. 40 of 2007 states "General Meeting of Shareholders has authority that is not given to the Board of Directors or the Board of Commissioners, within the limits specified in this law and/or the articles of association". Paragraph (2) of the same law also mentioned that "In the forum, shareholders are entitled to obtain information relating to the Company from the Board of Directors and/or the Board of Commissioners, as long as it relates to the agenda of the meeting and does not conflict with the interests of the Company*"*.

The implementation of the shareholder forum as an internal monitoring mechanism for limited liability company is based on Article 78 paragraph (2) of Law No. 40 of 2007. Annual shareholder meeting must be held no later than 6 (six) months after the end of the financial year. Paragraph (3) of the Law No. 40 of 2007 also regulated that "At the annual shareholder meeting, all documents from the Company's annual report as referred to in Article 66 paragraph (2) must be submitted [29]". The responsibility for submitting the annual report is borne by the Board of Directors after being reviewed by the Board of Commissioners within a period of no later than 6 (six) months after the company's financial year ends.

Unlike the sole proprietorship, the arrangement of the sole proprietorship as contained in Law No. 11 of 2020 concerning Job Creation does not recognize the mechanism of internal control at all. The authority of the Board of Directors in Article 153D paragraph (1) of Law No. 11 of 2020 is to carry out the management of the company for micro and small enterprises for the benefit of the Company in accordance with the purposes of the Company. Paragraph (2) of the same article confirms that the authority is based on policies deemed appropriate within the limits specified in the law. Then, it is also emphasized that the position of shareholders in article 153E of the Law No. 11 of 2020 as the founder of the company is an individual.

The review above shows that the sole proprietorship does not recognize the existence of internal controls such as that found in limited liability company. This is because the shareholders and the Board of Directors in a sole proprietorship are held by one person. It is not possible to have internal control such as that found in limited liability company. To overcome abuses in individual companies, Law No. 11 of 2020 concerning Job Creation only emphasizes that the implementation of individual companies is carried out by the Board of Directors by the objectives of the company's establishment.

[29] Law No. 40 of 2007 on Limited Liability Companies. Art 66 Paragraph (2), "The annual report as referred to in paragraph (1) must contain at least: a. a financial report consisting of at least a balance sheet at the end of the last financial year in comparison with the previous financial year, a statement of profit and loss for the financial year concerned, a statement of cash flows, and a statement of changes in equity, as well as notes to the financial report; b. reports on the Company's activities; c. report on the implementation of Social and Environmental Responsibility; d. details of problems that arose during the financial year that affected the Company's business activities; e. a report on the supervisory duties that have been carried out by the Board of Commissioners during the last financial year; f. names of members of the Board of Directors and members of the Board of Commissioners; g. salaries and allowances for members of the Board of Directors and salaries or honoraria and allowances for members of the Board of Commissioners of the Company for the new past year".

c. External Monitoring

External supervision of a limited liability company is implicitly regulated in Law No. 40 of 2007. Article 138 paragraph (1) of Law No. 40 of 2007 mentioned that "An examination of a company may be carried out to obtain data or information if there is an allegation that the company commits an unlawful act that is detrimental to shareholders or third parties, or members of the Board of Directors or the Board of Commissioners commit acts against the law that are detrimental to the company or shareholders or third parties. The organ appointed to examine alleged violations, in paragraph (2) of Law No. 40 of 2007 is a district court whose jurisdiction covers the domicile of the company.

Law No. 40 of 2007 also determines legal subjects who can apply for examination of Limited Liability Company. Article 138 paragraph (3) of Law No. 40 of 2007 stipulates that an application can be submitted by:

a. 1 (one) shareholder or more representing at least 1/10 (one per ten) of the total shares with voting rights;
b. other parties who based on laws and regulations, the articles of association of the company or an agreement with the company are authorized to submit a request for examination; or
c. public prosecutor's office.

Even though the sole proprietorship company and Limited Liability Company have the same position as legal entities, the external supervision arrangements are very different. In sole proprietorship companies, external supervision is implicitly regulated in Law No. 11 of 2020 concerning Job Creation. Article 153 F paragraph (1) of Law No. 11 of 2020 stipulates the obligation of the Board of Directors to make financial reports in the form of implementing good corporate governance. Paragraph (2) of these Law regulates regarding financial reporting is regulated in a government regulation.

Government Regulation No. 8 of 2021, stipulates the existence of a financial reporting mechanism. Article 10 paragraph (1) of the Government Regulation regulates "Individual companies are required to make financial reports". Paragraph (2) of these Law mentioned as well related financial reports are reported to the Minister by filling in the electronic financial report submission form no later than 6 (six) months after the end of the reporting accounting period. The minister referred to in this provision is the minister in charge of cooperative affairs and small and medium enterprises. Individual companies that do not submit financial reports will be subject to administrative sanctions. Article 12 paragraph (1) of the Government Regulation determines the sanctions that can be imposed on individual companies that do not submit reports in the form of written warning, termination of access rights to services, or revocation of legal entity status.

Based on the above provisions, the external supervision model for sole proprietorships in Indonesia is carried out by the minister in charge of cooperative affairs and small and medium enterprises which is only limited to the financial management of the company. In contrast to Limited Liability Company, external supervision also involves indications of abuse of the company, such as acts against the law or actions that harm certain parties which result in the imposition of corporate crimes. External supervision of an sole proprietorship company in the form of an obligation to submit financial statements can result in the dissolution of the company if the company does not submit a report under the obligations that have been determined. However, this only concerns violations in the submission of financial statements.

Table 1. Comparison of the Supervision System of Sole Proprietorship Company with Limited Liability Company

	Sole Proprietorship	**Limited Liability Company**
Direct and Indirect Supervision	• Direct supervision through the relevant minister • No indirect supervision	• Direct supervision through shareholders • Indirect supervision through related parties or the community
Internal monitoring	No internal control	Have internal control (GMS)
External Monitoring	Have external supervision (Relevant Minister)	Have external supervision (related parties and the prosecutor's office)

Source: processed by the author

The cause of the differences in the form and mechanism of supervision between an individual and a limited liability company is the initial goal of the government to establish a sole proprietorship to open up easy access to business for small and micro business actors. In addition to reasons for the ease of doing business, minimal supervision of individual companies is also due to the scale of business run by individual companies which are classified as small and micro-scale. Hence, they are considered not to require extra supervision such as supervision at the company. The lack of supervision of individual companies on the one hand will facilitate and provide space for creativity for the community to run a business, but on the other hand, the lack of supervision has the potential to misuse the company for certain interests.

3. Comparison of Supervision of Sole Proprietorships in Several Countries

Tessema (2012) said that one way to ensure the company is run according to the rules is to monitor the company's business transactions. Supervision is a process to ensure that the owners of the company do not violate the rules and principles in running their business.[30] Such supervision is not intended to limit creativity and business development, but rather to control efforts from the government to ensure that the use of individual companies does not harm certain parties.

Supervision of sole proprietorships in several countries such as the European Union uses a public disclosure format in the form of providing a list of sole proprietorships provided by the local government. The state may publish the list and purpose of establishing a sole proprietorship into public information for registered companies and inform the public.[31] The government of the European Union exerts indirect control over the misuse of a sole proprietorship by informing the public of the list and purpose of establishing a sole proprietorship.

Unlike in China, the government requires sole proprietorships to prepare financial statements every year and be audited by an officially recognized accounting firm.[32] In contrast to China, the control mechanism from the government is indirectly stated clearly that financial statements are submitted to accountants who are recognized by the government for auditing.

Meanwhile in Germany, the supervision of a sole proprietorship is the same as the mechanism for controlling a limited liability company. Although sole proprietorship, the owner of the company may appoint a management or executor of the company. In this position, the owner of the company can request a financial accountability report to the

[30] Assamen Mekonnen Tessema, ‘Comparative Single-Member Companies of Germany, France and England: A Recommendation to Ethiopia’ [2012] SSRN Electronic Journal <http://www.ssrn.com/abstract=2193070>.

[31] Miao (n 11) 7.

[32] Miao (n 11) 9.

appointed management of the company[33] or request a special auditor to examine the financial statements of the sole proprietorship company.

Similar to Germany, in France the managers of the Company prepare annual reports, inventories, and financial accountants which are addressed to the owners of the Sole Proprietorship. However, this applies only to the owner of the Sole Proprietorship appointing a manager to manage the company. For individual companies that do not appoint other managers, the financial statements are audited by an official accountant institution. [34] This also applies in the United Kingdom, if the owner of the sole proprietorship appoints a manager, the manager is the one who reports financially to the owner of the company, but if the owner of the company does not appoint a manager, then the owner of the Company is obliged to make an annual report.[35]

Based on the comparison of several countries above, it can be seen that the supervisory mechanism is clearly and explicitly regulated. The object of supervision of individual companies such as in the European Union, China, Germany, France, and the United Kingdom is limited to the financial reporting of the Company. It is understood that the pattern of economic life in the five countries is influenced by the existence of a free market. Hence, the state has limited space to intervene in private companies.

The following will describe the comparison of the mechanism of supervision of sole proprietorships in the European Union, China, Germany, France, and the United Kingdom with the mechanism of supervision of sole proprietorships in Indonesia:

a. Direct and Indirect Supervision

Direct supervision of sole proprietorships can be found in China. The government requires each sole proprietorship company to prepare financial statements every year and be audited by an officially recognized accounting firm. Likewise in Germany, direct supervision of individual companies is carried out such as supervision of the company or requesting an official auditor to examine the financial statements of individual companies. The same is true in France and the United Kingdom, where direct supervision is carried out by the owner of the company on the daily executives of the company who have been previously appointed.

[33] Tessema (n 30) 25.
[34] Tessema (n 33).
[35] Tessema (n 33).

In Indonesia, direct supervision is carried out by submitting financial reports prepared by the Board of Directors as well as company holders. Financial reports are submitted to the minister in charge of cooperative affairs and micro and medium enterprises. In addition, the regulation emphasizes the threat of sanctions for individual companies that do not submit reports in the form of warnings to sanctions for revocation of legal entity status. According to Naibaho (2019), administrative sanctions are aimed at enforcing the law. Hence, the rules can run effectively, punish the violators of the rules, and provide a vigilance effect and a deterrent effect for perpetrators to repeat their actions.[36]

The indirect supervision is exemplified in the European Union. The supervision is carried out through the mechanism of providing a list of listed companies to the public by providing the purpose of establishing the company. This mechanism is provided by the local government openly. Hence, the public can receive information about the position of an sole proprietorship company. In general, this seems to be the same in Indonesia, where the government through the Ministry of Law and Human Rights provides a site[37] for the public to find out whether a company is officially registered or not. However, until now the site can only be used to check the status of the company without any further information regarding the company's objectives as found in the European Union.

b. Internal monitoring

Internal control over sole proprietorships in the European Union, China, Germany, France, and the United Kingdom has not found an adequate supervisory mechanism. It's just that in Germany, France, and England there is a mechanism for company holders to appoint an executor of the company. The implementer will be controlled internally by the company holder. The lack of internal control over individual companies is due to the conditions for the establishment of the company itself which can be established by one person. Hence, internal supervision is not possible.

This practice is similar in Indonesia. Internal control is not explicitly recognized in the provisions governing Sole Proprietorship. Although there is a Board of

[36] Nathalina Naibaho, 'Criminal Sanction In Administrative Law: A Right Way To Go? (Applying Criminal Sanction In Administrative Act)' (2019) 4 Tadulako Law Review 47.

[37] 'AHU - PERSEROAN PERORANGAN' <https://ptp.ahu.go.id/profil>.

Directors, the Board of Directors also acts as the owner of the company. In a more specific regulation through Government Regulation No. 8 of 2021, it does not regulate the existence of an internal monitoring mechanism.

c. External Monitoring

Sole proprietorship external oversight can be found in China. The supervisory mechanism is carried out by an official auditor to examine the company's financial statements. This mechanism also applies in Germany with special inspections from outside parties in the form of special auditors to examine the financial statements of individual companies. Likewise in France and the United Kingdom when the internal control mechanism cannot be enforced, the company is required to submit financial reports to the auditors.

The external monitoring mechanism above has differences from external supervision in Indonesia. Unlike in China, Germany, France, and the UK, which use official auditors as recipients of financial reports, in Indonesia, external supervision is carried out by the government through the ministry in charge of cooperatives and small and medium enterprises. The financial report must be submitted by the Board of Directors or the owner of the company no later than 6 (six) months after the end of the current accounting period. Based on the technical regulations governing Sole Proprietorships in Indonesia, the submission of the report contains 3 (three) items, such as a statement of financial position, a statement of profit and loss, and notes on the current year's financial statements.[38]

Table 2. Comparison of Supervision of Sole Proprietorships in Several Countries

	Indonesia	European Union	China	German	Francis	English
Live Monitoring	There is	There isn't any	There is	There is	There is	There is
Indirect Supervision	There isn't any	There is	There isn't any	There isn't any	There isn't any	There isn't any
Internal monitoring	There isn't any	There isn't any	There isn't any	There are certain conditions	There are certain conditions	There are certain conditions

[38] Government Regulation No. 8 of 2021 on the Authorized Capital of the Company and Registration of the Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses. Art 10 Paragraph (2-3); Elyta Ras Ginting, *Hukum Kepailitan* (1st edn, Sinar Grafika 2018); Rahayu Hartini, *BUMN Persero: Konsep Keuangan Negara Dan Hukum Kepailitan Di Indonesia* (Setara Press 2017); Fuady Munir, *Hukum Pailit Dalam Teori Dan Praktek* (5th edn, PT Citra Aditya Bakti 2014).

External Monitoring	There is	There is	There is	There is	There is	There is

Source: processed by the author

Table 2 above shows that in general the internal control of individual companies is not available effectively. However, each country has external supervision of individual companies with different supervisory mechanisms and techniques. The non-availability of effective internal control is due to the requirements for the establishment of a company that can be established by one person and it is not possible to conduct internal supervision. As for the availability of an external supervisory mechanism for the company as a consequence of implementing the principles of good corporate governance to prevent misuse of individual companies.

Corporations in Indonesia have already implemented good corporate governance in practice.[39] The background history of the strengthened good corporate governance in Indonesia began in 1999.[40] Post South Asia's monetary crisis in 1999, Indonesian companies struggled to recover their business. The 'Western Protocol' via the International Monetary Fund manual introduces Indonesian corporations to good corporate governance management. Since after, the Indonesian Government focused on promoting the use of good corporate governance. Several awards are given to corporations that successfully implement good corporate governance. The Indonesian Good Corporate Governance Award is annually held by an independent institution called Economic Review, supported by the Indonesian Government. Several state-owned enterprises also successfully achieved this award, for example, the Mandiri

[39] Thomas S Kaihatu, 'Good Corporate Governance dan Penerapannya di Indonesia' (2006) 8 Jurnal Manajemen Dan Kewirausahaan 1 <https://jurnalmanajemen.petra.ac.id/index.php/man/article/view/16505>; Prianto Budi Saptono and Dwi Purwanto, 'Historical Development of Good Corporate Governance in Indonesia (1998-2020): Government's Role in Establishing the Regulatory Framework' (2022) 18 Jurnal Borneo Administrator 263 <http://samarinda.lan.go.id/jba/index.php/jba/article/view/1041> accessed 7 February 2024.

[40] Surifah, 'The Role Of Corporate Governance In The Effect Earnings Management Has On Firm Value' (2017) 32 Journal of Indonesian Economy and Business 51 <https://jurnal.ugm.ac.id/jieb/article/view/12793> accessed 7 February 2024; Prasetio, *Dilema BUMN: Benturan Penerapan Business Judgment Rule (BJR) dalam Keputusan Bisnis Direksi BUMN* (1st edn, Rayyana Komunikasindo 2014).

Utama Finance[41] and Telkom.[42] This become questionable, after the enactment of the Job Creation Law, whether these good practices also could be applied for sole proprietorship companies

D. Conclusion

The results of the study show that, first, the supervisory mechanism in the sole proprietorship company and a limited liability company has a significant difference. The difference lies in internal control, that is, the sole proprietorship company does not have an internal control mechanism at all, while the the usual limited liability company has effective internal control through a General Meeting of Shareholders forum. In addition, the monitoring mechanism for sole proprietorship company is less than the supervisory mechanism at the usual limited liability company. The difference in the supervisory mechanism is due to the initial purpose of establishing a sole proprietorship company in Indonesia, which is intended to provide ease of doing business. Hence, the supervisory aspect is not taken into account too much. On the other hand, the scale of business run by a sole proprietorship company is smaller than the scale of business run by a legal entity in the form of a limited liability company.

Second, the comparison of individual monitoring mechanisms in the European Union, China, Germany, France, and the United Kingdom with Indonesia generally has similarities, namely that each country does not have an effective internal control mechanism. However, each country provides an external monitoring mechanism for individual companies with different forms of technical implementation. The unavailability of internal control is caused by the requirements for the establishment of a company that can be established by one person, so it does not allow for effective internal control. As for the availability of an external supervisory mechanism for the company as a consequence of implementing the principles of good corporate governance to prevent misuse of individual companies.

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[42] 'Telkom Raih Most Excellence GCG Implementation' <https://www.cnbcindonesia.com/news/20231213191444-4-497085/telkom-raih-most-excellence-gcg-implementation> accessed 29 January 2024.

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