
Comparison of the Limited Liability Company Law in Indonesia and Brunei Darussalam

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Abstract. This study aims to compare the regulations regarding the establishment and supervision of Limited Liability Companies (LLCs) in Indonesia and Brunei Darussalam. Using a normative legal research method, this study analyzes the differences and similarities in the establishment procedures of LLCs in both countries, including legal requirements, necessary documents, and company registration mechanisms. The study also discusses the comparison in corporate supervision, including accountability, transparency, and protection for both majority and minority shareholders. The approaches used are the statute approach and the conceptual approach, focusing on the legislation governing Limited Liability Companies in both countries. The results of the study indicate that although Indonesia and Brunei Darussalam have different procedures for establishing and supervising LLCs, both countries apply the principles of accountability and transparency as the basis for shareholder protection and corporate supervision.

Keywords: Liability, Company, Indonesia, Brunei Darussalam

1. INTRODUCTION

A company can be defined as any form of business entity that operates permanently and continuously, established, operates, and is located within the territory of Indonesia, with the primary objective of making a profit. No business activity is intended to incur losses. The discussion of companies, particularly limited liability companies, seems to bring us closer to understanding and directly engaging in those companies. Especially for those who aspire to establish a large company and expand their business to various countries, including Brunei Darussalam. Therefore, it is essential to discuss the differences in the forms of companies, particularly limited liability companies, between Indonesia and Brunei Darussalam, which both have different legal systems, namely civil law and common law. Limited Liability Companies (LLC) are the primary choice for many entrepreneurs because they offer limited liability, providing legal protection against the risks of the business run by shareholders, directors, and commissioners.

Limited Liability Companies (LLC) are the dominant form of business entity in Indonesia, applicable to small, medium, and large enterprises. This is due to the flexibility and legal protection offered by this form of business. As a legal entity separate from its owners (shareholders), LLCs provide the advantage of limited liability. This means that shareholders are only liable up to the amount of their investment in the company and will not lose their personal assets if the company incurs losses or goes bankrupt. This advantage makes LLCs the preferred choice for entrepreneurs who want to mitigate personal risk in

running a business. Moreover, LLCs also have a clear organizational structure, facilitating management and supervision. With the existence of boards of commissioners and directors responsible for managing and overseeing the company, LLCs provide a more systematic and structured arrangement in their business operations. This makes LLCs more attractive to investors due to the clear division of responsibilities between the company's managers and shareholders.

Legislation governing companies in Indonesia has undergone significant development, especially concerning Limited Liability Companies (LLCs). One major change is the issuance of Law Number 40 of 2007 concerning Limited Liability Companies, which replaces the previous law. This law provides a more modern and comprehensive legal basis for regulating the establishment, management, and dissolution of LLCs in Indonesia. One crucial aspect of this law is the stricter regulation regarding corporate governance, including transparency, accountability, and protection of minority shareholders. The law introduces the concept of the Annual General Meeting of Shareholders (AGM), which becomes the main mechanism for corporate decision-making, and requires companies to have a board of commissioners and directors with clear responsibilities in running the company.

Furthermore, this law also regulates corporate social responsibility (CSR), obliging companies to contribute to the surrounding community and the environment. Regarding the protection of minority shareholders, this law grants specific rights, such as the right to access company information and the right to hold directors accountable for losses resulting from negligence or unlawful actions. With this regulation, Indonesia aims to create a more transparent, fair, and accountable business environment, which is expected to enhance investor confidence and encourage sustainable economic growth.

Meanwhile, Brunei Darussalam has a different legal system than Indonesia, despite both regulating similar business entities, namely Limited Liability Companies (LLCs). Brunei's legal system is heavily influenced by Islamic law and common law, focusing more on simplicity and flexibility compared to Indonesia. Regulations regarding companies in Brunei lean towards accessible rules that provide ease in establishing and managing companies, particularly for foreign investors. Nonetheless, Brunei still offers legal protections for shareholders, such as safeguards for voting rights in general meetings and the obligation to prepare transparent financial reports. The government of Brunei Darussalam also establishes several basic regulations governing the establishment of companies, such as the Companies Act, which regulates the formation of LLCs, the responsibilities of directors, and the obligations of companies concerning tax reporting and compliance with international

accounting standards. Although Brunei prioritizes simplicity in corporate regulation, it still maintains accountability and shareholder protection, providing a sufficient legal framework for running companies efficiently and transparently.

Despite the fact that Indonesia and Brunei Darussalam have similar business forms, namely Limited Liability Companies (LLCs), the striking differences in their legal systems significantly influence the way regulations and corporate law enforcement are carried out. Indonesia, with its positive legal system that emphasizes written laws, has more detailed and stringent regulations regarding aspects such as corporate governance, minority shareholder protection, and corporate social responsibility. In contrast, Brunei, which emphasizes Islamic law and common law, tends to be more straightforward and flexible while still ensuring legal safeguards for shareholders and corporate accountability.

Such a comparison is essential to understand, especially for entrepreneurs planning to expand their businesses into both countries, as differences in regulations will impact the way they conduct business, comply with regulations, and manage shareholder-manager relationships. As a result, even though there are similarities in the business forms, the implementation and regulation of companies in both countries are significantly influenced by their respective legal systems, demonstrating fundamental differences in their approaches to business management.

This research aims to identify key issues related to the comparison of regulations concerning Limited Liability Companies (LLCs) in Indonesia and Brunei Darussalam. It discusses the establishment of Limited Liability Companies in both Indonesia and Brunei Darussalam, covering the differences and similarities in the procedures for establishing companies, including legal requirements, necessary documents, and company registration mechanisms in both countries. Additionally, the research will examine differences in regulations governing the organizational structure of companies in Indonesia and Brunei Darussalam, such as the roles and authorities of directors, commissioners, and the General Meeting of Shareholders (GMS). Lastly, this research will explore the similarities and differences in corporate supervision in both countries, encompassing aspects of accountability, transparency, and protection for shareholders, both majority and minority. This research is expected to provide a deeper understanding of how both countries regulate and supervise companies within their respective legal frameworks.

2. METHOD

The normative legal research method is employed in this legal study, focusing on document examination and legal norms. This method aims to analyze the existing legal rules and their applications or interpretations in a specific regulatory context. In normative legal research, the primary sources used are statutory regulations and other legal literature. This approach is highly relevant in researching legal issues that are theoretical and conceptual in nature, such as exploring the differences and similarities in company establishment procedures, including legal requirements, necessary documents, and registration mechanisms in both countries, as well as examining the similarities and differences in corporate supervision in both countries, covering aspects of accountability, transparency, and shareholder protection. One of the approaches utilized in this method is the statute approach and the conceptual approach. The statute approach involves reviewing and analyzing various rules regulating specific issues, such as Law Number 40 of 2007 concerning Limited Liability Companies and related regulations. Through this approach, the researcher can discuss the comparison of Limited Liability Company law in Indonesia with that in Brunei Darussalam.

3. RESULT AND DISCUSSION

Regulations Regarding the Establishment of Limited Liability Companies in Indonesia and Brunei Darussalam

According to the Limited Liability Company Law (UUPT) in Indonesia, a Limited Liability Company (LLC) is a legal entity established based on an agreement. Article 7 Paragraph (1) of the UUPT stipulates that the company must be established by at least two individuals, which can be natural persons or legal entities. Therefore, shareholders in an LLC can consist of individuals (natural persons) or legal entities (legal persons). To establish a Limited Liability Company in Indonesia, there are material requirements that must be fulfilled, including: first, an agreement among two or more individuals; second, the deed of establishment must be drawn up in the form of an authentic deed; third, the company must have a minimum capital; and fourth, the issuance of shares must occur at the company's establishment.

The process of establishing an LLC in Indonesia consists of several stages according to the provisions in the UUPT, namely a preparation phase, which involves the agreement and arrangement between the founders documented in a notarial deed as the deed of establishment. The preparation of the deed of establishment in front of a notary must include the company's articles of association and a provision that at least 25% of the authorized

capital must be subscribed and paid up, along with determining the name of the LLC to be registered with the Ministry of Law and Human Rights. The registration phase involves submitting the deed of establishment containing the articles of association to the Minister of Law and Human Rights for approval, resulting in the company obtaining legal status, with daily operations managed by the directors responsible for the company's legal actions. Subsequent registration of the company in the company registry occurs after the articles of association are approved by the relevant authorities. The final stage is the announcement in the additional news of the state, which represents the final phase in the LLC establishment process to fulfill the principle of public transparency regarding the establishment of the company. After this stage, the organization is considered to be legally established, and all legal actions taken on behalf of the company become the responsibility of the company itself.

The management of the LLC is the responsibility of the Board of Directors. Each member of the Board of Directors is personally responsible for any losses incurred by the company if proven guilty or negligent in carrying out their duties in accordance with the provisions stipulated in the law. Members of the Board of Directors are also required to report to the company regarding the shares they own, either personally or through family members, in the company or in other companies, which must then be recorded in a special register. The Board of Directors has the following obligations:

- a. To prepare a register of shareholders, special registers, minutes of the General Meeting of Shareholders (GMS), and minutes of directors' meetings as regulated in Article 100 Paragraph 1 Letter a.
- b. To prepare annual reports in accordance with the provisions of Article 66 and the company's financial documents as regulated in the law on Company documents, according to Article 100 Paragraph 1 Letter b.
- c. To maintain all registers, minutes, financial documents of the company, and other documents as referred to in Letters a and b, and to keep them at the company's residence, as regulated in Article 100 Paragraph 1 Letter c.
- d. Upon written request from shareholders, the Board of Directors must grant permission to shareholders to inspect the shareholder register, special registers, minutes of GMS, as well as annual reports, and provide copies of the GMS minutes and copies of annual reports, according to Article 100 Paragraph 3.

According to Article 1 Paragraph (6) of the Limited Liability Company Law (UUPT), the Board of Commissioners is an organ of the company tasked with conducting general and/or specific supervision in accordance with the articles of association and providing advice to the

Board of Directors. Based on this provision, the duties and authorities of the Board of Commissioners include overseeing the company's management policies and actions in general, both relating to the company and its business activities, and advising the Directors. Therefore, all members of the Board of Commissioners must perform their supervisory and advisory duties with good faith, caution, and responsibility, in accordance with the goals stipulated in the law, especially in the Limited Liability Company Law (UUPT) and the concerned company's articles of association.

The General Meeting of Shareholders (GMS) is the highest authority within the Limited Liability Company (LLC), which has the right to determine the company's general policies, to appoint and dismiss directors and commissioners, and to approve the annual report. There are two types of GMS: the Annual GMS and the Extraordinary GMS. The Extraordinary GMS can be held anytime as needed for the interests of the company. The Annual GMS must be held no later than six months after the end of the fiscal year and must include annual report documents comprising at least the following seven elements:

1. Financial statements of the company for the mentioned period, which at least includes the end-of-year balance sheet compared to the previous year, income statement, statement of changes in equity, and cash flow statement.
2. Report on the company's activities during the period.
3. Report on the company's social and environmental responsibilities.
4. Report on problems that occurred during the period that hindered the company's activities.
5. Report on the supervision conducted by the Board of Commissioners.
6. Report from each member of the Board of Commissioners and Directors.
7. Report on the salary and allowances for members of the Board of Directors or Commissioners.

In comparison, in Brunei Darussalam, regulations regarding various forms of companies, such as sole proprietorships, cooperatives, civil partnerships, and limited liability companies (Companies), are governed under a single legislative framework, namely the Companies Act Chapter 39, which has undergone 19 amendments. Specifically, regulations concerning Limited Companies in Brunei Darussalam are specified within several articles of this legislation. A limited company in Brunei Darussalam is an entity recognized as a legal entity or registered under the provisions of this law, thus all matters related to the company are protected under the applicable law.

According to Article 4 Paragraph 1 of the Companies Act, to establish a limited company, at least seven individuals are needed to set up a public company or two or more individuals to establish a private company. Paragraph 2 states that a company's obligations to its members are limited by the amount specified in the company's memorandum, which can be regulated for members' contributions to the company's assets if the company is closed, or for a company that does not have limitations on members' responsibilities.

The limited company is subject to the provisions of the Companies Act and other written laws and the stipulations in its memorandum or articles of association. The company has full capacity to carry out or conduct any business, undertake any actions, or execute any transactions, as well as hold rights, authority, and privileges in that regard. In addition, companies may have objects stated in their memoranda. The company's memorandum or articles may also include provisions that limit the company's capacity, rights, authorities, or privileges. Thus, all regulations governing the company can be outlined in the company's memorandum outside of applicable legislative provisions.

In Brunei Darussalam, the company establishment process is conducted via Online Registration by accessing the designated website. After entering the site, prospective company founders are required to create an account by filling out personal data or relevant information. Once the account is registered, users can log in and reserve the desired company name. The reserved name must first receive approval before it can be officially registered. Once the company name is approved, the company founder can choose to establish either a private company or a public company. The subsequent process involves filling out five key pieces of information: company details (General Details), company address (Addresses), director composition (Directors), share distribution (Shares), and shareholder composition (Shareholders). After all data is verified, the company founder must make payment. The company's certificate of incorporation is then sent via the registered email, and the company can commence operations. Before starting the establishment process, prospective company founders must consider the applicable provisions in Companies Act Chapter 39, particularly the requirements concerning a minimum of two directors, one of whom must be a Bruneian citizen and at least 18 years old, and capable of understanding the legal consequences that must be fulfilled to be a director in the company.

Here, directors are required to act in good faith and diligence in performing their duties and are prohibited from using company information for unrelated personal interests. Should they violate such prohibitions, the directors are liable for any losses arising from their actions. All business activities carried out by the company must be conducted under the supervision

and direction of the directors. In executing their authority or duties, the directors rely on reports, statements, financial data, other provided information, and professional advice from company employees, advisors, and relevant directors or committees. In this case, directors are obligated to act in good faith and carry out investigations appropriate to the company's circumstances, remaining exempt from being deemed negligent if they are unaware that the information entrusted to them is unfounded.

The General Meeting of Shareholders (GMS) must be held no later than 15 months after the previous annual meeting. If the meeting is held more than 18 months after the company's establishment, the company is exempt from holding a meeting the following year. If the company cannot conduct the meeting within the specified period, the registrar may grant an extension based on specific reasons, but it may not exceed the concerned calendar year. All parties entitled to receive notices regarding the GMS must be informed in accordance with the provisions. If the meeting is not held, the entire members of the company may be obligated to pay meeting costs, except for meetings confirming special resolutions.

Notices for meetings must be given in writing at least 21 days prior, or a longer period as stipulated in the company's articles of association. Members not governed by the memorandum or articles have the right to attend company meetings and speak on any resolutions before the meeting is held. To achieve quorum at the meeting, there must be two or more members possessing at least one-tenth of the company's issued share capital, or if the company does not have share capital, at least 5 percent of the total members. In private companies, the quorum consists of two members, while in public companies, it consists of three members present in person. Every member present at the meeting can elect a chairman, and if the company has share capital, each member has the right to vote in proportion to the number of shares held.

Comparison of Corporate Supervision in Indonesia and Brunei Darussalam

In both Brunei Darussalam and Indonesia, the Board of Directors has the primary responsibility for managing the company and must act in accordance with the principles of good faith, accountability, and prudence. In this regard, Directors in both countries are required to make decisions based on sufficient information and are accountable for losses that may arise from negligence or actions inconsistent with the law. The provisions concerning the duties and powers of Directors in Brunei are regulated under the Companies Act, while in Indonesia, these provisions are regulated under the Limited Liability Company Law (UUPT). Both statutes require the Board of Directors to implement their functions with transparency and accountability, ensuring that decisions made align with the interests of the company and

its shareholders. If errors or negligence detrimental to the company are found, the directors may be held accountable for those losses, either in the form of compensation or other legal sanctions.

Oversight of the Board of Directors is a crucial element in corporate governance in both Brunei Darussalam and Indonesia. The Board of Commissioners serves a strategic function to ensure that the policies determined by the Directors are in the best interests of the company and its shareholders. In Indonesia, this is governed under the Limited Liability Company Law (UUPT), which grants the Board of Commissioners the authority to oversee the operational activities of the company, as well as provide advice and recommendations to the Directors for improved policies. Similarly, in Brunei, the Companies Act stipulates that the Board of Commissioners is responsible for supervising the management of the company and ensuring that the Directors act within the applicable legal framework. The Board of Commissioners functions as an external monitor to protect against actions by the Directors that may harm the company or its shareholders and must act independently and objectively when carrying out its supervisory duties.

The General Meeting of Shareholders (GMS) plays a critical role in oversight and decision-making in both Brunei Darussalam and Indonesia. The GMS is where shareholders, both majority and minority, can express their aspirations and approve essential policies proposed by the Directors. In Indonesia, the annual GMS is regulated in the Limited Liability Company Law (UUPT), which mandates the Directors to present an annual report encompassing financial statements and reports on the company's activities, where shareholders have the right to provide input, as well as determine vital matters such as the appointment and dismissal of Directors. Meanwhile, in Brunei, the Companies Act also mandates the holding of an annual GMS to approve financial reports and company policies. The GMS functions as a mechanism for transparency and accountability for shareholders to ensure that the Directors manage the company according to their interests and as a means for decision-making involving all shareholders.

In Indonesia, the supervision of company management is conducted by granting sufficient rights to shareholders to oversee the Directors through the General Meeting of Shareholders (GMS). Shareholders have the right to access financial reports and essential company documents, ensuring transparency in company management. Minority shareholders are also protected under the Limited Liability Company Law (UUPT), which allows them to exercise their voting rights in the GMS to safeguard their interests. The UUPT specifically regulates to prevent majority shareholders from abusing their power while protecting

minority shareholders from decisions detrimental to them. With this regulation, Indonesia guarantees stronger accountability and transparency in the oversight by shareholders.

In Brunei Darussalam, the oversight of companies is more centralized in the Board of Commissioners and Directors, who hold the main responsibility for overseeing company functioning. While shareholders still have the right to monitor through the General Meeting of Shareholders (GMS) and can access company reports, the oversight exercised by minority shareholders is less robust than in Indonesia. In Brunei, most control over the company remains in the hands of majority shareholders, who wield greater influence in key decision-making. This regulatory framework means that minority shareholders have a more limited opportunity to impact the company's policy direction, resulting in supervisory mechanisms that tend to favor the interests of majority shareholders.

In the context of limited liability company legislation in Indonesia, transparency and information disclosure are explicitly regulated in the Limited Liability Company Law (UUPT), which mandates the Directors to present annual reports to shareholders and the public. These annual reports include various vital information, such as audited financial statements, reports on company activities, and supervisory reports from the Board of Commissioners, all aimed at ensuring openness and accountability in company management. Furthermore, shareholders have full access to financial reports and relevant company documents, allowing them to conduct effective oversight over the company's operations. With this regulation, Indonesia ensures a high level of transparency and enables shareholders to make informed decisions based on clear and reliable data.

In Brunei Darussalam, transparency is also mandated in the Companies Act, which requires companies to provide information regarding company activities to shareholders. Although there is an obligation to provide such access to information, the system of oversight and transparency in Brunei prioritizes the protection of majority shareholders. Minority shareholders have limited access to essential information and company activities, which may restrict their ability to effectively oversee the management of the company. This leads to a system where important decisions are more likely influenced by majority shareholders while minority shareholders have limited capacity to influence policies or decisions made by the company, despite existing transparency obligations.

Protection for minority shareholders is stipulated with rigor under the Limited Liability Company Law (UUPT). The UUPT prohibits actions that harm minority shareholders by majority shareholders, such as in instances of takeover or company restructuring that might jeopardize the rights of minority shareholders. In addition, the UUPT grants voting rights to

minority shareholders in the General Meeting of Shareholders (GMS), enabling them to protect their interests and participate in significant decision-making. This regulatory framework guarantees mechanisms that can balance the power between majority and minority shareholders, thus reducing potential abuse of power by the majority and safeguarding the rights of smaller shareholders.

Policies regulated in Brunei Darussalam, although providing mechanisms for protection for shareholders, do not secure minority shareholders as effectively as in Indonesia. In Brunei's legal system, policies and company decisions tend to favor majority shareholders, who exercise greater control over the company's direction. While there are regulations in the Companies Act that guarantee shareholder rights, the role of minority shareholders in decision-making remains limited. Existing protection mechanisms offer less opportunity for minority shareholders to effectively influence company policy or safeguard their rights in adverse situations, making the oversight system more inclined toward the interests of majority shareholders.

Regarding the comparison of limited liability company law in Indonesia and Brunei Darussalam, the Indonesian government should mandate owners or founders of limited liability companies to register through the Online Single Submission (OSS) system, as stipulated in the Government Regulation Number 24 of 2018 concerning Integrated Electronic Business Licensing Services. The OSS system in Indonesia aims to simplify licensing processes and accelerate business registration in a more efficient and integrated manner, similar to that implemented in Brunei Darussalam. In Brunei, the company registration process is conducted online through a system that allows founders to access various business licensing services, including name reservations, company type selection, and structured and verified company data submission. By requiring entrepreneurs to utilize the OSS system, Indonesia can facilitate quicker and more transparent company establishment while also reducing potential abuses of licensing and increasing accountability in the business sector. This will also support a better investment climate, as a clear and easily accessible system will attract more domestic and international investors to conduct business in Indonesia.

4. CONCLUSION

In general, both in Indonesia and Brunei Darussalam, the process of establishing and regulating Limited Liability Companies (LLCs) requires a minimum number of shareholders, namely two or more individuals, with the obligation to prepare essential documents such as the deed of establishment and the articles of association of the company. In Indonesia, the establishment of the LLC is regulated by the Limited Liability Company Law (UUPT), which mandates approval from the Minister of Law and Human Rights and registration of the company in the company registry, while in Brunei Darussalam, the establishment of limited companies is governed by the Companies Act Chapter 39 with a more modern process through online registration. Both countries also regulate the responsibilities of members of the Board of Directors to act with good faith and caution in performing their duties, as well as the obligation to hold General Meetings of Shareholders (GMS) periodically to ensure transparency and accountability of the companies. Although there are differences in procedures and administrative provisions, both legal systems emphasize strong oversight principles for corporate management to protect the interests of shareholders and other related parties.

Despite the similarities in regulating the responsibilities of directors, oversight by the Board of Commissioners, information transparency, and shareholder protection, significant differences remain in enforcing and strengthening protections for minority shareholders and overall oversight by shareholders. In Indonesia, the protection of minority shareholders is tightly regulated through the Limited Liability Company Law (UUPT), which affords greater rights to shareholders to oversee and protect their interests, including concerning transparency and accountability. Conversely, in Brunei, while there are transparency and reporting obligations, oversight by shareholders, particularly minority shareholders, is limited due to the dominance of majority shareholders. Therefore, Indonesia can learn from Brunei to further simplify the company registration process using an integrated OSS system to enhance efficiency and transparency in company establishment and attract more domestic and international investors.

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