



## Potential Abuse of Unaccountable Management of One-Person Company in Banking Loan Agreement

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### Abstract

One of the new legal subjects in Indonesian corporate law based on Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Job Creation Law) is a One-Person Company (which is then written as OPC), which is a legal entity that meets the criteria of micro and small businesses. This review aims to analyse the management mechanism of an OPC under the Job Creation Law, which is linked to the Principle of Accountability in banking credit agreements. The management mechanism of a One-Person Company under the Job Creation Law is unclear, namely the ambiguity of the definition and functions of the company's organs, which is only centered on one shareholder, concurrently as the organ that runs and supervises the company, so that the management of an OPC becomes unaccountable. The unaccountable management mechanism of an OPC has the potential to abuse the authority of the company's organs. In a banking credit agreement entered into by an OPC, this can occur at the stage of the credit application process and the execution of the credit agreement. At the credit application stage, the absence of a Board of Commissioners in an OPC has the consequence that the decision on the credit application plan is only in the hands of one organ only, namely the shareholder, who is one person, who also doubles as a director of the company through a Shareholders' Resolution. There are no other organs that can be asked for consideration and or approval related to credit applications that are in accordance with the needs of the company. Meanwhile, at the stage of implementing the credit agreement, there is no other organ that carries out the function of supervising the use of credit and the obligation to submit periodic financial reports to the bank, in accordance with the positive/affirmative covenants agreed in the credit agreement.

**Keywords:** one-person company, company management, accountability principle

## I. Introduction

Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, has implications for changes in various fields of legislation, including Law Number 40 of 2007 on Limited Liability Companies. The Job Creation Law has changed the definition of a Limited Liability Company in the Company Law so that a Limited Liability Company is no longer defined as a legal entity of capital alliance established by agreement, but can also be an individual legal entity, which is a new legal subject in corporate law in Indonesia.

One of the objectives of the Job Creation Law is to create as many jobs as possible in order to fulfil the right to a decent livelihood through Micro and Small Enterprises, as stated in the General Elucidation of the Job Creation Law. In that context, the government is trying to improve the ease of doing business or Ease of Doing Business (EoDB) for MSE actors, one of which is by inviting prospective MSE actors to establish individual legal entities. Indonesia's EoDB ranking in 2019 fell one place to 73rd out of 190 countries. At the ASEAN level, Indonesia is ranked 6th behind Brunei Darussalam and Vietnam. Based on the World Bank report, Indonesia's ease of doing business score rose 1.42 points to 67.96.<sup>1</sup> In 2020, Indonesia achieved an ease of doing business index score of 69.6. While this is better than the Philippines, Cambodia, Laos, Myanmar and Timor Leste, Indonesia still lags behind Vietnam, Brunei Darussalam, Thailand, Malaysia and Singapore.<sup>2</sup>

However, the ease of doing business is feared to potentially cause a number of problems, including the mismanagement of individual legal entities by the organs of the individual legal entity itself. According to Ridwan Khairandy, in the Company Law, there are 3 (three) organs of the company, namely the General Meeting of Shareholders (GMS), the Board of Commissioners and the Board of Directors.<sup>3</sup> Each of the above organs, especially the Board of Directors and the Board of Commissioners, perform their respective functions and have different rights and obligations, authorities and responsibilities, to achieve the company's objectives. These organs in a capital partnership legal entity are usually held by different people. The Board of Directors leads the company and the Board of Commissioners supervises the Board of Directors in running the company, so there are restrictions on power. The different functions of each organ are closely related to the principles of good corporate governance (GCG), which must be considered in order to avoid conflicts of interest.<sup>4</sup>

In One-Person Company, the three organ functions are held by the same person. As stated by Ruhulina and Yenny, in a One-Person Company there is no two-way mechanism or check and balance, because the role of director and supervisor is carried out by one party, namely the business actor himself.<sup>5</sup> With this single role, the possibility of fraud committed by the shareholder concerned against third parties is wide open.<sup>6</sup> Based on HG (initials) statement as the owner of Gracia Pangan Sejahtera (OPC) Pvt. Ltd., which is an One-Person Company, the management of the company is carried out by himself. HG conducts management from the start of the establishment, determining the direction and objectives of the company, the

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<sup>1</sup> Putri, Sylvia, and David Tan. 2022. 'Analisis Yuridis Perseroan Perorangan Ditinjau dari Undang-Undang Cipta Kerja dan Undang-Undang Perseroan Terbatas'. *Unes Law Review* 4 (3): 317-31. <https://review-unes.com/index.php/law/article/view/239>

<sup>2</sup> Ahdiat, Adi. 2023. 'Indeks Kemudahan Berbisnis Indonesia Cukup Baik Di ASEAN'. Katadata. 27 March 2023.

<sup>3</sup> Khairandy, Ridwan. 2020. *Perseroan Terbatas Doktrin, Peraturan Perundang-Undangan, Dan Yurisprudensi*. Yogyakarta: Kreasi Total Media.

<sup>4</sup> Hidayati, Lili. 2016. 'The Management of a Limited Company Based on Limited Company Law Related to Good Corporate Governance Principles' II (2): 197-210. <https://jkh.unram.ac.id/index.php/jkh/home>.

<sup>5</sup> Sebayang, Ruhulima Br, and Yenny Yuniawaty Lunandi. 2024. 'Perubahan Perseroan Terbatas Perorangan Menjadi Perseroan Terbatas Persekutuan Modal Ditinjau Dari Kemanfaatan Hukum'. *UNES Law Review* 6 (4): 10723-35. <https://review-unes.com/index.php/law/article/view/1924>.

<sup>6</sup> Yani, T Rezky Amelia Indra, Ida Hanifah, and Ramlan. 2024. 'Kajian Sinkronasi Hukum Tentang Pendirian Perseroan Terbatas Perorangan Ditinjau Dari Undang-Undang Nomor 40 Tahun 2007 Dan Perpu No 02 Tahun 2022'. *IBLAM LAW REVIEW* 4 (1): 276-302. <https://doi.org/10.52249>.

implementation of the functions of the board of directors, the implementation of supervisory functions, accounting records, and legal relations with third parties. In addition to his role as a shareholder, the interview found that HG also acts as a director to carry out management.

This topic is interesting to investigate further regarding the management mechanism of a One-Person Company, which in fact only depends on one person or one man show, which establishes a One-Person Company based on a Statement of Establishment in Indonesian and will obtain status as a legal entity after the Statement of Establishment is registered with the Minister of Law and Human Rights with the issuance of an electronic Registration Certificate. The Statement of Establishment does not specify the rights and obligations of the company's organs other than a statement of the founders' willingness to comply with the regulations relating to One-Person Company and other relevant regulations. Moreover, if the One-Person Company, then in the course of its business no longer meets the criteria of MSE and if its shareholders then become more than one person. In this context, its legal entity status under the law must be changed to a capital partnership legal entity.

Based on data from the Directorate General of General Legal Administration of the Ministry of Law and Human Rights of the Republic of Indonesia as of October 31, 2022, there are 55,830 individual legal entities that have been registered, namely in West Java Province with 13,760, East Java Province with 7,042, and Special Region Province of Jakarta with 6,338 One-Person Companies.<sup>7</sup> As of August 16, 2024, there were 203,746 business actors who had established and received registration certificates for One-Person Companies. If this data is associated with the ease of obtaining business loans from banks, of course a good management mechanism is needed for all these One-Person Companies in carrying out legal actions with their creditors.

One of the creditors of the One-Person Company in question is the bank. As a financial intermediary institution, national banks certainly play a role in channelling credit for funds that have been collected from the public, among others to small and medium entrepreneurs, including One-Person Company. The provision of credit from the banking institution in question aims to meet the funding needs required by One-Person Companies in running their business based on the principles of Prudential Banking. The purpose of providing credit will run well if the One-Person Company, as a debtor, also carries out its credit obligations in good faith to the bank as a creditor, in accordance with the amount and time agreed upon in the credit agreement.

This research is relatively new compared to previous research. The following are previous studies that examine One-Person Companies, among others: a) Desak Putu Dewi Kasih, A.A. Gede Duwira Hadi Santosa, I Made Marta Wijaya and Putri Triari Dwijayathi, who discuss the concept of capital association related to the paradigm shift of Limited Liability Companies;<sup>8</sup> b) Putu Devi Yustisia Utami and Kadek Agus Sudiarawan discussed the position of the company's organs in One-Person Company and analyzed the authority and responsibilities of One-Person Company organs based on the Job Creation Law and the Company Law;<sup>9</sup> c) Shinta Pangesti, which discusses the company's regulation of MSE criteria based on the Job Creation Law and its implementing regulations and legal loopholes;<sup>10</sup> and d) Yuliana Duti Harahap, Budi Santoso and Mujiono Hafidh Prasetyo who discuss changes in the limited liability company arrangements in the Job Creation Law, and the legal responsibility of shareholders in One-Person Company with

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<sup>7</sup> Amanda, Gita. 2022. 'Sukung Pengembangan UMK, BRI Beri Kemudahan Layanan Untuk Perseroan Perseorangan'. *Republika*. 7 November 2022.

<sup>8</sup> Putu, Desak, Dewi Kasih, A A Gede Duwira, Hadi Santosa, I Made, Marta Wijaya, and Putri Triari Dwijayathi. 2022. 'Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas sebagai Asosiasi Modal'. *Arena Hukum* 15 (1): 20-37. <https://doi.org/https://doi.org/10.21776/ub.arenahukum.2022.01501.2>.

<sup>9</sup> Devi, Putu, Yustisia Utami, and Kadek Agus Sudiarawan. 2021. 'Perseroan Perorangan Pada Usaha Mikro dan Kecil: Kedudukan dan Tanggung Jawab Organ Perseroan'. *Jurnal Magister Hukum Udayana* 10 (4): 769-81. <https://doi.org/10.24843/JMHU.2021.v10.i04>.

<sup>10</sup> Pangesti, Shinta+. 2021. 'Penguatan Regulasi Perseroan Terbatas Periranga Usaha Mikro dan kecil dalam Mendukung Pemulihan Ekonomi Masa Pandemi Covid-19'. *Jurnal Rechtsvinding* 10 (1): 117-31. <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/650>.

MSE criteria.<sup>11</sup> The difference between this research and previous research is the assessment of the potential for abuse that may be carried out by One-Person Companies in bank credit agreements considering that one of the requirements is a financial report that is actually prepared based on the principle of accountability.

## II. Research Problems

Based on the background description above, the author formulates the problem formulations to be discussed in this article are: 1) how is the mechanism of management of a One-Person Company connected with the principle of accountability according to the Job Creation Law; and 2) how is the potential abuse of unaccountable management of a One-Person Company in a banking credit agreement.

## III. Research Methods

This research uses a normative juridical approach method that makes secondary data the main data. Furthermore, analytical descriptive is an appropriate research specification where problems that occur in banking practices on credit applications from MSEs are analysed based on the principle of accountability and the Job Creation Law and its implementing provisions. Therefore, data collection methods/techniques were carried out through literature studies and interviews with one of the One-Person Company business actors to support the fulfilment of complete information. The literature data collected is also supported by the experience of practicing as a banking practitioner. An inventory of a series of laws and regulations relating to PT in general and One-Person Companies with legal entity status in particular, the principle of accountability and signs in credit agreements is then used as an analysis knife in mapping the implementation of bank credit applications by One-Person Companies through qualitative analysis methods.

## IV. Result And Discussion

### 1. Mechanism of One-Person Company Management in relation to the Principle of Accountability under the Job Creation Law

The management of a Capital Partnership Company is carried out by the company's organs, namely the GMS, Commissioners and Directors, who carry out their respective functions and have different rights and obligations, authorities and responsibilities to achieve the company's objectives. As a legal entity, a Capital Partnership Company has the characteristics of a regular organization in addition to the existence of separate assets, has certain objectives, and has its own interests as stipulated in the doctrine.<sup>12</sup>

A One-Person Company also has the status of a legal entity. Government Regulation Number 81 of 2021 (GR No. 81/2021) does not explicitly mention the organs and their functions. The Job Creation Law only mentions the limited liability of shareholders, which is limited to the shares they own against losses for agreements made on behalf of One-Person Company. Then when viewed in PP 8/2021, it is stated that the founder is also the director and shareholder, and the decision of the shareholder has the same legal force as the GMS.

In the Company Law and the Job Creation Law, there is no difference in the composition and definition of company organs for capital partnership legal entities and individual legal entities, namely the GMS, Board of Directors and Board of Commissioners. GMS is a corporate organ that has authority that is not granted to the Board of Directors or the Board of

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<sup>11</sup> Harahap, Yuliana Duti, Budi Santoso, Mujiono Hafidh, Prasetyo Program, and Studi Magister Kenotariatan. 2021. 'Pendirian Perseroan Terbatas Perseorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja'. *NOTARIUS* 14 (2): 725-38. <https://ejournal.undip.ac.id/index.php/notarius/article/view/43800>.

<sup>12</sup> Rido, Ali. 2001. *Badan Hukum Dan Kedudukan Badan Hukum Perseroan, Perkumpulan, Koperasi, Yayasan, Wakaf*. Bandung: Alumi.

Commissioners within the limits specified in the Job Creation Law and/or the articles of association. As there is no difference in the definition of company organs, the definitions of GMS, Board of Directors and Board of Commissioners in a Capital Partnership Company can be viewed as applying to a One-Person Company as well. However, GR No. 81/2021 does not specifically regulate these three organs. GR No. 81/2021 only mentions the phrases “founders”, “directors”, “shareholders” and “shareholders' resolutions.”

Government Regulation Number 81 of 2021 does not regulate the existence of a Board of Commissioners, which is usually contained in the articles of association of a Capital Partnership Company and, among other things, has the function of supervising the Board of Directors in carrying out the company's activities. Regardless of the MSE criteria, a business must still be managed and supervised properly. The absence of other organs that function to supervise in a One-Person Company can result in abuse of authority and the principle of limited liability of shareholders. This can also potentially cause losses to other parties who enter into a legal relationship with the One-Person Company. Thus, in accordance with the opinion of Febry Jaya,<sup>13</sup> Yanuar Agung Sudjateruna dan Gde Made Swardhana,<sup>14</sup> There should be a regulation on the Board of Commissioners for One-Person Companies, as a condition for the fulfilment of the element of a legal entity, namely the existence of a regular organization.

A different opinion was expressed by Rumawi et al, that an One-Person Company can be classified as a legal entity because it has the elements required by legislation, doctrine to be called a legal entity.<sup>15</sup> However, with the existence of a single management in an One-Person Company, the author disagrees with Rumawi et al that the characteristics of a legal entity have been fulfilled simply because the Job Creation Law stipulates that an One-Person Company is a legal entity.

The function of organs that play a role in ownership, management and supervision is important to avoid conflicts of interest.<sup>16</sup> Therefore, its management must pay attention to GCG principles, which include the principle of accountability or clarity of functions of each organ of the company.

Accountability according to Sedarmayanti, as cited in Sri Wahyuni's writing,<sup>17</sup> is a manifestation of the obligation to account for the success or failure of the implementation of the organization's mission in achieving predetermined goals and objectives through accountability media that is carried out periodically. According to Mashaw, Jerry L., as cited in the writing of Januar Eko Prasetyo,<sup>18</sup> accountability is a concept of behaviour to supervise other parties, to assess whether they have fulfilled their responsibilities, and to apply sanctions if they have not fulfilled their responsibilities. Meanwhile, according to Trow, M. accountability is an obligation to provide reports to others, to answer various questions about how various resources have been used and what their impact is.<sup>19</sup> Accountability is one of the GCG principles known as TARIF, namely: Transparency, Accountability, Responsibility, Independency, and Fairness).

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<sup>13</sup> Jaya, Febri. 2021. 'Potensi Konflik Kepentingan dalam Pendirian Badan Hukum Perorangan Pasca Revisi Undang-Undang Perseroan Terbatas dalam Omnibus Law'. *Kosmik Hukum* 21 (2): 48. <https://doi.org/10.30595/kosmikhukum.v21i2.10310>.

<sup>14</sup> Sudjateruna, Yanuar Agung, and Gde Made Swardhana. 2021. 'Pengaturan Organ Komisaris Dalam Perseroan Terbatas Perseorangan Menurut Perspektif Undang-Undang Cipta Kerja'. *Acta Comitatus* 6 (03): 474-90. <https://doi.org/10.24843/ac.2021.v06.i03.p2>.

<sup>15</sup> Rumawi, Siti Sariroh, Udiyo Basuki, Mellisa Towadi, Moh Ali, and Supianto. 2023. 'Karakteristik Perseroan Terbatas Perorangan dalam Hukum Indonesia'. *Jurnal Hukum Bisnis* 12 (2): 63-73. <https://jurnal.itscience.org/index.php/jhb/article/view/2151>.

<sup>16</sup> Hidayati, Lili. 2016. 'The Management of a Limited Company Based on Limited Company Law Related to Good Corporate Governance Principles' II (2): 197-210. <https://jkh.unram.ac.id/index.php/jkh/home>.

<sup>17</sup> Wahyuni, Sri. 2015. 'Implementasi Akuntabilitas dan Transparansi untuk Mewujudkan Pemerintah Daerah yang Bersih'. *Katalogis* 3 (11): 173-79.

<sup>18</sup> Prasetyo, Januar Eko. 2017. 'Tazkiyatun Nafs: Kajian Teoritis Konsep Akuntabilitas'. *Jurnal Analisa Akuntansi dan Perpajakan* 1 (1): 19-33. <https://ejournal.unitomo.ac.id/index.php/akuntansi/article/view/108>.

<sup>19</sup> Prasetyo, Januar Eko. 2017. 'Tazkiyatun Nafs: Kajian Teoritis Konsep Akuntabilitas'. *Jurnal Analisa Akuntansi dan Perpajakan* 1 (1): 19-33. <https://ejournal.unitomo.ac.id/index.php/akuntansi/article/view/108>.

Starting from the expert opinion above, especially Sedarmayanti, accountability for One-Person Company is also closely related to the obligation to submit periodic financial reports as stipulated in the Job Creation Law and PP 8/2021, in order to realize good corporate governance. The financial statement in question contains a statement of financial position, profit and loss and notes on the financial statements for the current year, which are used as a database of One-Person Company profiles and a basis for consideration in determining the criteria for One-Person Company.

On the other hand, good management of a company, including a One-Person Company, especially financial management, will certainly show the financial performance of the One-Person Company itself. Thus, accountability plays an important role, especially in terms of preparing informative and transparent financial reports from an institution or company.<sup>20</sup>

According Luthfi Mohamad Zen and Yeti Sumiyati,<sup>21</sup> The application of the principle of accountability in a One-Person Company is one of the solutions to solve problems due to the division of authority between company organs. In addition, it is also mentioned that the principle of accountability can minimize the impact of agency problems, which arise due to differences in interests between management, shareholders and stakeholders. Indeed, every company must be able to implement the principle of accountability and responsibility in all its business activities.

With regard to the unclear definitions and functions of One-Person Company organs as explained above, the principle of accountability as one of the principles of GCG will be difficult to implement. As stated by Setijati Sekarasih et al, the management of the Company based on the principles of good corporate governance will be difficult to achieve by looking at the organs of an One-Person Company which only consist of directors who concurrently serve as shareholders.<sup>22</sup> One-Person Company are managed on a one man show basis and there are no provisions that specifically regulate the duties and responsibilities as well as the rights and obligations of the organs of a One-Person Company as a legal entity, other than only the Statement of Establishment. An unaccountable management mechanism has the potential for abuse of authority and legal uncertainty, given that the governance arrangements in a One-Person Company are also not discussed in detail and comprehensively,<sup>23</sup> in particular the liability of shareholders who concurrently serve as Directors, for legal acts made for and on behalf of One-Person Companies.

In that context, if it is known that there is an unlawful act committed by the founder/owner, it is possible to apply the principle of piercing the corporate veil, which Ratna Januarita in her writing refers to as the Principle of Specific Responsibility.<sup>24</sup> This condition becomes very relative to the good faith of the shareholders of the One-Person Company in running the company, especially in the absence of the Board of Commissioners organ, including but not limited to the legal actions of the One-Person Company with its creditors.

## **2. Potential Abuse of Unaccountable Management of One-Person Companies in Banking Credit Agreements**

As explained and the author's opinion described above, in essence, the implementation of unaccountable One-Person Company Governance has the potential to result in abuse of authority

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<sup>20</sup> Maryam, Radhita. 2023. 'Pentingnya Laporan Keuangan Yang Akuntabel Untuk Perusahaan'. Konsultanku. 17 March 2023.

<sup>21</sup> Zen, Luthfi Mohamad, and Yeti Sumiyati. 2022. 'Problematika Hukum Pengelolaan Usaha Mikro dan Kecil sebagai Perseroan Perorangan'. *LITIGASI* 23 (1): 83-100. <https://doi.org/https://doi.org/10.23969/litigasi.v23i1.5287>.

<sup>22</sup> Sekarasih, Setiaji, Abdul Rachmad Budiono, Sukarmi Sukarmi, and Budi Santoso. 2023. 'Pergeseran Paradigma Pendirian Perseroan Terbatas dalam Undang-Undang Cipta Kerja'. *Jurnal Ius Constituendum* 8 (2): 207-24. <https://doi.org/10.30641/dejure.2021.v21.321-330>.

<sup>23</sup> Siregar, Imastian Chairandy, Sunarmi Sunarmi, Mahmul Siregar, and Detania Sukarja. 2022. 'Tanggung Jawab dan Tata Kelola Perseroan Perorangan Sebagai Badan Hukum Baru di Indonesia'. *Locus Journal of Academic Literature Review* 1 (1): 26-35. <https://doi.org/10.56128/ljoalr.v1i1.49>.

<sup>24</sup> Januarita, Ratna. 2021. 'The Newly Sole Proprietorship as Limited Liability Company in Recent Indonesian Company Law'. *MIMBAR* 37 (1): 0-00. <https://ejournal.unisba.ac.id/index.php/mimbar/article/view/7771>.

and legal uncertainty of the responsibility of shareholders and/or One-Person Companies for their creditors. If this is related to the purpose of the existence of a One-Person Company, which is, among other things, to increase the growth of MSEs in addition to increasing the EoDB rating, then the parties that must also receive attention are the creditors, which include banks. With the Limited Liability Company label attached to an MSE, an MSE will gain the trust of the banking community because it has the status of a legal entity, which is eligible for business capital support through bank credit. In a banking credit agreement between a One-Person Company as a debtor and a bank as a creditor, there is certainly a series of legal actions from both parties.

The series of legal actions is usually adjusted to the purpose and type of credit requested by the prospective debtor, including consumptive or productive. From the prospective debtor's side, based on the author's experience, the series of legal actions referred to are generally a written application for credit by attaching the required documents, namely identity documents (Electronic ID / current articles of association) and supporting documents, including Tax Payer Identification Number, financial data (bank statements / financial reports), business legality and collateral (e.g. land and building certificates / stocks and receivables / Vehicle Registration Certificate / Deposits). Meanwhile, from the bank's side, the series of legal actions in question broadly includes credit granting analysis (identification, document verification through interactive services on the website of the Directorate General of Population and Civil Registration, Debtor Information System/ Financial Information Service System of the Financial Services Authority of Indonesia (OJK), Customer Due Diligence (CDD), business profile analysis, financial statements, credit objectives, sources of payment, and collateral quality assessment.

After the credit application is approved by the bank, the bank will submit a credit offer letter (offering letter) to the prospective debtor with a certain period of time, containing terms and conditions that must be approved in advance by the prospective debtor. If the prospective debtor has agreed to the offering letter, then according to A. Wangsawidjaja Z.<sup>25</sup> who also has experience as a banking practitioner, it will be followed up together by both parties with the process of signing a credit agreement (can be made under hand or notarial according to the bank's internal provisions), binding of collateral (e.g. Deed of Mortgage, Fiduciary or Pawn, according to the type of collateral provided), and credit disbursement to the debtor's account that has been previously made at the bank. After credit disbursement, there are still important things that must be done by the bank, namely the monitoring stage of the implementation of the credit agreement, including orderly payment of credit obligations, certainty of credit use according to credit objectives, requesting financial reports, periodic visits to the place of business and / or collateral.

Every provision of credit certainly contains risk or can potentially become non-performing loans, so banks must make risk mitigation efforts through credit management, which according to Johanes Ibrahim Kosasih and Hassanain Haykal is carried out, among others, by paying attention to aspects of credit planning,<sup>26</sup> organization, credit granting, credit administration and good credit security. Credit risk in general can occur or be influenced by various factors, namely those originating from internal banks and debtors as well as external banks and debtors. Factors originating from outside the bank and the debtor, for example, include changes in economic/business conditions, changes in applicable laws and regulations regarding the debtor's project or economic sector and the occurrence of disasters due to force majeure conditions. Factors originating from within the bank, for example, include poor integrity of credit analysts and the bank not having good credit granting and supervision systems and procedures. Therefore, in granting credit, banks should conduct an assessment from various aspects using the bank's prudential principles (Prudential Banking Principle)<sup>27</sup> namely the 5C Principles (Character, Capital, Capacity, Condition of Economy, Collateral), the 7P Principles (Personality, Party,

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<sup>25</sup> Wangsawidjaja. 2020. *KREDIT BANK UMUM - Menurut Teori Dan Praktik Perbankan Indonesia*. I. Yogyakarta: Lautan Pustaka.

<sup>26</sup> Kosasih, Johannes Ibrahim, and Hassanain Haykal. 2021. *Kasus Hukum Notaris Di Bidang Kredit Perbankan*. Jakarta: Sinar Grafika.

<sup>27</sup> Mulyati, Etty. 2016. *Kredit Perbankan Aspek Hukum Dan Pengembangan Usaha*. Bandung: Refika Aditama.

Purpose, Prospect, Payment, Profitability, Protection) and the 3R Principles (Returns, Repayment, Risk Bearing Ability).

In addition to using these three principles, the credit agreement between the debtor and the bank usually stipulates a series of clauses (covenants) which are mainly aimed at protecting the interests of the bank. Covenants regarding what the debtor may not do are referred to as Negative Covenants, which include, for example, as long as the credit has not been paid off, the debtor is prohibited from requesting credit from other banks and or changing the legal form of the company without the bank's approval. Meanwhile, Covenants regarding what the debtor must do are referred to as Positive/Affirmative Covenants,<sup>28</sup> which include, for example, the obligation to submit periodic financial reports to the bank.

Factors originating from internal debtors, for example, include the misuse of credit by debtors that are not in accordance with credit purposes. This is more related to the character of the debtor itself, whether an individual debtor or in the form of a legal entity, which as an artificial person, its legal actions are represented by the management of the legal entity itself. According to Sutan Remy Sjahdeini and Tan Kamelo as quoted by Trisadini P. Usanti and Abd. Shomad, the legal relationship between the debtor and the bank is actually consensual, a type of reciprocal agreement and in the form of a credit agreement, which applies as a law for both parties to be carried out in good faith (*te goede trouw*).

One of the legal entities with credit risk can be a One-Person Company, in the form of potential misuse of unaccountable management by its shareholders, who are also directors or one man shows. The potential misuse of unaccountable management of a One-Person Company in a Banking Credit Agreement can occur at the stages of the credit application process and the execution of the credit agreement.

At the stage of the credit application process, the absence of a Board of Commissioners in a One-Person Company has the consequence that the decision on the credit application plan is only in the hands of one organ, namely the shareholder, which amounts to one person, who also doubles as a director of the company through a Shareholder Decree. There is no other organ that can be asked for consideration and or approval regarding whether the proposed credit value is in accordance with the company's business plan or the personal interests of shareholders, whether the supporting documents in the form of financial statements attached to the credit application are valid, and whether the collateral submitted to the bank is a true asset of the company, which is obtained from the company's cash or personal assets of shareholders whose source of purchase funds is not from the company's profits.

At the stage of implementing the credit agreement, there is no other organ to supervise the obligation to submit financial reports of the One-Person Company periodically in order to realize good corporate governance, as stipulated in the Job Creation Law and Government Regulation Number 8 of 2021 explained above, as well as to the bank in accordance with the positive/affirmative covenants agreed in the credit agreement. In addition, there is also no other organ to supervise the use of credit, whether for the benefit of the company's business plan according to the purpose of the credit, or for the personal interests of shareholders (side streaming).

All potential misuse of the management of the company, especially in terms of the obligation to submit periodic financial reports, if proven, will lead not only to the liability of the One-Person Company as a legal subject in the credit agreement to the bank if its collectability becomes bad, but also to the personal liability of its shareholders. This is what is meant as the potential misuse of unaccountable management of the One-Person Company in banking credit agreements. As stated by Ariefio and Afida, the preparation of the One-Person Company financial statements as a form of professionalism and implementation of corporate governance

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<sup>28</sup> Kosasih, Johannes Ibrahim, and Hassanain Haykal. 2021. *Kasus Hukum Notaris Di Bidang Kredit Perbankan*. Jakarta: Sinar Grafika.

will be difficult to implement because there is only one person with concurrent positions so that there is no internal supervision of the Company.<sup>29</sup>

Although casuistically the bank, for example, based on credit analysis, has given a decision in the form of credit approval only in the amount of the share value of the shareholders of the One-Person Company and requires Negative and Positive Covenants in the credit agreement as a form of mitigation and implementation of the Prudential Banking Principle, if the MSE actors since the beginning of establishing the One-Person Company do have bad faith, for example by engineering financial statements as the basis for applying for credit at a bank, then the One-Person Company can be said to have been used as a vehicle for the personal interests of the founders/shareholders. This can occur because there is no Board of Commissioners organ that performs a supervisory function to the Board of Directors to carry out the purposes and objectives of the One-Person Company.

As stated by HG as the owner of a One-Person Company, the Gracia Pangan Sejahtera (OPC) Pvt. Ltd., that the implementation of the supervisory function within the internal scope of a One-Person Company is carried out directly by the owner of the company either directly or indirectly. HG carries out the supervisory function directly by himself which is carried out vertically on the performance of his employees only. Regarding the financial statements, the interview results show that since its establishment in October 2022, Gracia Pangan Sejahtera (OPC) Pvt. Ltd., has never made and has never submitted financial reports to the Ministry of Law and Human Rights at all.

In relation to the obligation to submit financial statements, Madelin Sanea et al. in their article argue that it is contrary to the EoDB perspective and will only burden One-Person Company. The author can understand this opinion; however, it must be remembered that this is a logical consequence of the status of a legal entity attached to a One-Person Company, namely as a legal subject of a Limited Liability Company that carries rights and obligations. Moreover, in the event that One-Person Company enters into a credit agreement legal relationship with its creditors, in this case banks. The Financial Statements of One-Person Company are very important for banking institutions, because they act as one of the elements that will be analysed for decision making in approving credit facilities submitted by One-Person Company. According to Widiya Wulandari and Titi Atifah Zahra Maha, the financial statements can be made by performing the initial stage in the accounting process, namely in the form of collecting evidence and recording transactions, as well as separating business records from personal financial records. It has been previously mentioned that the decision-making mechanism in a One-Person Company is only based on the decision of the Shareholders, who are also the Directors of the company. This condition then also has the potential for unaccountable business management, namely the misuse of credit purposes, which can have implications for the fall of credit collectability. This in turn will also harm banks as financial intermediary institutions.

On the other hand, although the Job Creation Law has emphasized that the shareholders of One-Person Company do not have personal responsibility for the commitments made for and on behalf of the company and do not have responsibility for the company's losses beyond their shares, the burden of responsibility of a One-Person Company to its creditors in the event of an abuse of shareholder authority in a credit agreement will become relatively complex, because in addition to the responsibility of the One-Person Company itself as a legal entity debtor, there is also the possibility of personal liability of the shareholders of the One-Person Company, which must first go through proving the doctrine of piercing the corporate veil.

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<sup>29</sup> Utama, Ariefio Pranata, and Afida Nur Rokfa. 2024. 'Pelaporan Keuangan Pt Perorangan Sebagai Wujud Tata Kelola Perusahaan Yang Baik'. *Jurnal Perspektif* 29 (1): 54-59. <https://jurnal-perspektif.org/index.php/perspektif/article/view/893>.

## V. Conclusion

The management mechanism of One-Person Company in the Job Creation Law is unclear, namely the ambiguity of the definition and functions of the company's organs, which is only centered on one shareholder, concurrently as the organ that runs and supervises the company, so that the management of One-Person Company is feared to be unaccountable.

The unaccountable management mechanism of a One-Person Company has the potential to abuse the authority of the company's organs. In a banking credit agreement entered into by a One-Person Company, this can occur at the stage of the credit application process and the execution of the credit agreement. At the credit application stage, the absence of a Board of Commissioners in a One-Person Company has the consequence that the decision on the credit application plan is only in the hands of one organ only, namely the shareholder, who is 1 one person, who also doubles as a director of the company through a Shareholders' Resolution. There are no other organs that can be asked for consideration and or approval related to credit applications that are in accordance with the needs of the company. Meanwhile, at the stage of implementing the credit agreement, there is no other organ that carries out the function of supervising the use of credit and the obligation to submit periodic financial reports to the bank, in accordance with the positive/affirmative covenants agreed in the credit agreement.

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