THE NORMATIVITY OF LIMITED COMPANY UNDER JOB CREATION LAW REGIME IN INDONESIA

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Abstract: The concept of a limited liability company based on Law Number 11 of 2020 concerning Job Creation (UU Cipta Kerja) through Government Regulation in Lieu of Law Number 2022 concerning Job Creation (Perppu Cipta Kerja) after being declared conditionally unconstitutional by the Constitutional Court, has now found its foundation again. This article examines the normativity of limited liability companies after the Perppu Cipta Kerja in two focuses. First, it relates to the legal ratio for the establishment of an individual company, and second, the normativity of an individual company from the perspective of Critical Legal Studies. Based on the type of normative research supported by conceptual, statutory, and philosophical approaches, this article concludes two: First, the legal ratio for the establishment of individual companies in the Perppu Cipgta Kerja is the government's great desire to provide convenience for MSEs in doing business and creating jobs. Second, based on the analysis of trashing, deconstruction, and genealogy, individual companies in the Perppu Cipta Kerja are still full of liberal individualism with a capitalist economic system style.
Keywords: Limited Liability Company; Individual Company; Critical Legal Studies; Job Creation Law

Introduction

The issuance of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereafter, Perppu Job Creation), which was subsequently ratified based on Law Number 6 of 2023 concerning the Ratification of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Law 6/2023) at the end of March 2023, marks the return of the Omnibus Law on Job Creation regime following the declaration of unconstitutionality by the Constitutional Court (MK) through Decision Number 91/PUU-XVIII/2020 on November 25, 2021. Despite the controversy that views Perppu Job Creation as a defiance of the government against MK Decision Number 91/PUU-XVIII/2020–because instead of complying and adhering to amend the Job Creation Law as mandated by the aforementioned MK decision, the President instead issued a government regulation in lieu of law that, both formally and substantively, remains the same as the Job Creation Law (Indonesia Corruption Watch, 2023). According to the

legal principle of "res judicata pro veritate habetur" or in administrative law known as "presumptio iustae causa," Perppu Job Creation must be considered correct as law in the book and can be considered legal as long as there is no decision or regulation declaring its invalidity (Febriyanti, 2022).

It is not at all different from the Job Creation Law, through Article 4 of the Job Creation Regulation in Lieu of Law (Perppu Job Creation), it outlines 10 areas of regulation that serve as means to achieve the following objectives:

Job creation and employment growth;

Guarantee of employment and fair and equitable compensation;

Adjustment of regulations related to favoritism, strengthening and protecting cooperatives, micro, small, medium enterprises, and national industries; and

Adjustment of regulations related to improving the investment ecosystem, ease of doing business, and accelerating the succession of national strategic projects (see: Article 3 of Perppu Job Creation).

One of the focus areas in this article is the ease of doing business, especially aspects related to the normativity of limited liability companies in Chapter VI. Specifically, Article 105 of Perppu Job Creation requires changes to 12 laws. Originally, it was known that Article 105 of the Job Creation Law required changes to 13 laws, including Law Number 28 of 2009 on Regional Taxes and Regional Levies. However, since it has already been amended by a new law (Law Number 1 of 2022 on Financial Relations between the Central Government and Regional Governments), it appears that the government considers it unnecessary for Perppu Job Creation to regulate it again.

No	Letter	Job Creation Law	Letter	Job Creation Perppu
1	a	Law Number 6 of 2011 concerning Migration	a	Law Number 6 of 2011 concerning Migration
2	b	Law Number 13 of 2016 concerning Patents	b	Law Number 13 of 2016 concerning Patents
3	c	Law Number 20 of 2016 concerning Marks and Geographical Indications	c	Law Number 20 of 2016 concerning Marks and Geographical Indications
4	d	Law Number 40 of 2007 concerning Limited Liability Companies	d	Law Number 40 of 2007 concerning Limited Liability Companies
5	e	Staatsblad 1926 Number 226 jo Staatsblad of 1940 Number 450 concerning Nuisance Law (Hinderordonnantie)	e	Staatsblad 1926 Number 226 jo Staatsblad of 1940 Number 450 concerning Nuisance Law (Hinderordonnantie)
6	f	Law Number 7 of 1983 concerning Income Tax has been amended several times, most recently with Law Number 7 of 2O21 concerning Harmonization of Tax Regulations	f	Law Number 7 of 1983 concerning Income Tax has been amended several times, most recently with Law Number 7 of 2O21 concerning Harmonization of Tax Regulations
7	g	Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods has been amended several times, most recently by Law Number 7 of 2O2l concerning Harmonization of Tax Regulations	g	Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods has been amended several times, most recently by Law Number 7 of 2O2l concerning Harmonization of Tax Regulations
8	h	Law Number 6 of 1983 concerning General Provisions and Procedures for	h	Law Number 6 of 1983 concerning General Provisions and Procedures for

		Taxation has been amended several times, most recently with Law Number 7 of 2O21 concerning Harmonization of Tax Regulations		Taxation has been amended several times, most recently with Law Number 7 of 2O21 concerning Harmonization of Tax Regulations
9	i	Law Number 28 of 2009 concerning Regional Taxes and Regional Levies	i	Law Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Farmers, and Salt Farmers
10	j	Law Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Farmers, and Salt Farmers	j	Law Number 3 of 1982 concerning Mandatory Company Registration
11	k	Law Number 3 of 1982 concerning Mandatory Company Registration	k	Law Number 6 of 20l4 concerning Villages
12	l	Law Number 6 of 20l4 concerning Villages	l	Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition
13	m	Law Number 5 of 1999 concerning Prohibition of Monopolistic Practices and Unfair Business Competition		

The focus of the study on the scope of changes that regulate limited liability companies is based on the paradigm of the status quo that a limited liability company structurally consists of two words, namely 'perseroan' and 'terbatas.' The word 'perseroan' grammatically is derived from the word 'sero' combined with the prefixes 'per-' and '-an,' which means about or concerning. Meanwhile, 'sero' lexically refers to shares. 'Perseroan' itself is defined as an association, partnership, or trading company (Bahasa, 2023).

In line with the change in the definition of Article 1, number 1 of Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) in the Job Creation Regulation in Lieu of Law (Perppu Job Creation), the lexical meaning of a limited liability company can be speculated to undergo changes that are ameliorative (meaning becoming better) or even pejorative (becoming worse). This is commonly understood because there has been a normative reform that is fundamental to the business climate in the field of limited liability companies. It is not excessive to say that the norms contained in the body of UUPT must ultimately be adjusted mutatis mutandis to follow the new concept of limited liability companies in the Perppu Job Creation, which states: “A Limited Liability Company... is a legal entity that, based on an agreement, conducts business activities with a capital that is entirely divided into shares or legal entities that meet the criteria for micro and small businesses as regulated in legislation concerning micro and small businesses.”

The changes that occur in the Perppu Job Creation – apart from the definition in Article 1, number 1 – concern provisions related to the establishment, capital, costs, and specific regulations for individual limited liability companies. This can be explicitly reviewed in the following table:

No	Article, Paragraph/Number	UUPT	Job Creation Law	Ciptaker Perppu
1.	Article 1 number 1	A Limited Liability Company, also known as a Company, is a legal entity that is a capital partnership	A Limited Liability Company (hereinafter referred to as a Company) is a legal entity that is a capital partnership, established based on an agreement, carrying out business activities with	

		that is established based on an agreement and carries out business activities with authorized capital that is entirely divided into shares and meets the requirements stipulated in this Law and its implementing regulations.	authorized capital that is entirely divided into shares or individual legal entities that meet the criteria for micro and small businesses as regulated in the laws and regulations concerning micro and small businesses.
2.	Article 7 paragraph (4)	The Company receives legal entity status on the date of publication of the Ministerial Decree ratifying the Company's legal entity.	After registering with the Minister and acquiring proof of registration, the company gains legal entity status.
3.	Article 7 paragraph (5)	After the Company obtains legal entity status and the shareholder's number less than 2 (two), the relevant shareholder is required to transfer some of his shares to another person or the Company issues new shares to another person within a maximum period of 6 (six) months of that situation.	After the Company achieves legal entity status and the shareholders number less than 2 (two), the shareholders are required to: within a maximum of 6 (six) months after the date of that circumstance, the shareholders concerned must: a. transfer some of its shares to other people; or b. The company issues new shares to other people.
4.	Article 7 paragraph (6)	If the time period specified in paragraph (5) is exceeded, the shareholders remain less than 2 (two) people, the shareholders are personally liable for the Company's obligations and losses, and the district court may dissolve the Company at the request of interested parties.	If the time period specified in paragraph (5) is exceeded, the remaining shareholders are less than 2 (two) people: a. shareholders are personally responsible for all obligations and losses of the Company; And b. at the request of interested parties, the district court can dissolve the Company.
5.	Article 7 paragraph (7)	The provisions in paragraph (1) requiring a Company to be founded by two (two) or more people, as well as the provisions in paragraphs (5) and (6), do not apply to: a. Persero whose shares are all owned by the state; or b. Companies that manage stock exchanges, clearing and guarantee institutions, deposit and settlement institutions, and other institutions as regulated in	The rules in paragraphs (1), (5), and (6) that require a Company to be founded by two (two) or more people do not apply to: a. Persero whose shares are all owned by the state; b. regionally owned enterprises; c. village-owned enterprises; d. Companies that run stock exchanges, clearing and guarantee institutions, deposit and settlement institutions, and other institutions in compliance with capital markets laws and regulations; or e. Companies that meet the micro and small business criterion.

		the Law on Capital Markets.	
6	Article 7 paragraph (8)		Micro and small businesses, as defined in paragraph (7) letter e, are those governed by rules and regulations governing micro and small firms.
7.	Article 32 paragraph (1)	The Company's authorized capital must be at least IDR 50,000,000.00 (fifty million rupiah).	The Company must have approved capital of the Company.
8.	Article 32 paragraph (2)	Laws governing specific business activities may establish a minimum amount of Company capital that is greater than the basic capital provisions contemplated in paragraph (1).	The amount of the Company's authorized capital, as defined in paragraph (1), is set by the decision of the Company's founder.
9.	Article 32 paragraph (3)	Government Regulation governs changes in the amount of allowed capital as intended in paragraph (1).	Government Regulations govern additional restrictions concerning the Company's authorized capital.
10.	Article 153	Provisions regarding fees for: a. obtain approval to use the Company's name; b. obtain a decision to ratify the Company's legal entity; c. obtain a decision to approve changes to the articles of association; d. obtain information about Company data in the Company register; e. notifications required by this Law in the Republic of Indonesia's State Gazette and Supplements to the Republic of Indonesia's State Gazette; and f. get a copy of the Ministerial Decree ratifying the Company's legal entity or approval of amendments to the Company's articles of organization governed by Government Regulation.	Requirements governing the costs of the Company as a legal body are governed by the requirements of laws and regulations governing non-tax state revenue.
11.	Article 153A paragraph (1)		Companies that fit the micro and small business standards can be created by one person.
12.	Article 153A paragraph (2)		The establishment of a Company for micro and small businesses, as envisaged in paragraph (1),

			is carried out on the basis of an establishment statement prepared in Indonesian.	
13.	Article 153A paragraph (3)		Government regulations provide additional provisions for the formation of companies for micro and small businesses.	Government Regulations contain additional regulations governing the formation of companies for micro and small firms, as intended in paragraph (1).
14.	Article 153B paragraph (1)		The statement of establishment, as defined in Article 153A paragraph (2), contains the Company's purposes and objectives, business activities, permitted capital, and other information pertaining to its establishment.	
15.	Article 153B paragraph (2)		By completing the form, the statement of establishment as envisaged in paragraph (1) is electronically submitted to the Minister.	
16.	Article 153B paragraph (3)		Further provisions regarding the material for the statement of establishment as intended in paragraph (1) and the format for the form as intended in paragraph (2) are regulated in a Government Regulation.	
17.	Article 153C paragraph (1)		The GMS decides whether to make changes to the Company's statement of incorporation for micro and small firms as envisaged by Article 153A, and then electronically notifies the Minister of those changes.	
18.	Article 153C paragraph (2)		Further provisions regarding the material and format for changes to the statement of establishment as referred to in paragraph (1) are regulated in a Government Regulation.	
19.	Article 153D paragraph (1)		The Directors of the Company for micro and small businesses, as defined in Article 153A, administer the Company in the interests of the Company and in accordance with the goals and objectives of the Company.	
20.	Article 153D paragraph (2)		Within the restrictions outlined in this Law and/or the Company's founding statement, the Board of Directors has the authority to carry out management as indicated in paragraph (1).	
21.	Article 153E paragraph (1)		Individuals are the Company's Micro and Small Enterprises, as defined in Article 153, shareholders.	The Company's shareholders for micro and small businesses as referred to in Article 153A are individuals.
22.	Article 153E paragraph (2)		Within a year, business founders are only permitted to form 1 (one) company for micro and small firms.	
23.	Article 153F paragraph (1)		In order to achieve sound corporate governance, company directors for micro and small firms, as	

			defined by Article 153A, must prepare financial reports.	
24.	Article 153F paragraph (2)		Government Regulations control additional clauses pertaining to the requirement to prepare financial reports.	
25.	Article 153G paragraph (1)		A GMS dissolves the Company for Micro and Small Businesses in accordance with Article 153A, as specified in a dissolution declaration, and electronically notifies the Minister of the dissolution.	
26.	Article 153G paragraph (2)		The Company's dissolution for micro and small firms, as specified in paragraph (l), takes place because: a. based on the GMS decision; b. the period of establishment stipulated in the statement of establishment has expired; c. based on a court order; d. the Company's bankruptcy assets are insufficient to cover bankruptcy fees due to the revocation of bankruptcy based on a commercial court ruling with lasting legal effect; e. according to the rules of the Law on Bankruptcy and Suspension of Debt Payment Obligations, the bankruptcy assets of a Company that has been declared bankrupt are in an insolvent state; or f. the cancellation of the company's business license, which would necessitate the company's dissolution in compliance with legislative requirements.	
27.	Article 153H paragraph (1)		A Company for Micro and Small Enterprises shall alter its status in order to become a Company in accordance with the rules of the relevant laws and regulations if it no longer fits the requirements for Micro and Small Enterprises as intended in Article 153A.	In the event that a Company for micro and small businesses no longer meets the criteria as intended in Article 153A paragraph (1), the Company must change its status to become a Company as intended in the provisions of statutory regulations.
28.	Article 153H paragraph (2)		Further provisions regarding changing the status of a Company for Micro and Small Enterprises to become a Company is regulated in Government Regulations.	Further provisions regarding the change of Company status for micro and small businesses to become a Company as intended in paragraph (1) are regulated in Government Regulations.

29.	Article 153I paragraph (1)		Companies for micro and small businesses are given reduced costs related to establishing a legal entity.
30.	Article 153I paragraph (2)		Further provisions regarding Company fee relief for micro and small businesses as referred to in paragraph (1) are regulated in accordance with the provisions of laws and regulations in the field of non-tax state revenue.
31.	Article 153J paragraph (1)		For micro and small firms, the shareholders of the company are not personally liable for agreements entered into on the company's behalf or for losses incurred by the company that exceed the value of the shares possessed.
32.	Article 153J paragraph (2)		The provisions as intended in paragraph (1) do not apply if: a. the Company's legal entity requirements have not been met or are not met; b. the concerned shareholder utilizes the Company for personal gain, whether directly or indirectly; c. the shareholder in question is complicit in an illegal act that the company has undertaken; or d. because of the unlawful use of the Company's assets by the concerned shareholders, whether directly or indirectly, the Company's assets cannot be used to pay off the Company's debts.

The general concept regarding individual limited liability companies, based on the mapping presented in Table 2 above, reveals that from the outset, the government as the creator of government regulations in lieu of law only intended to include provisions regarding companies that can be established by individual micro and small business actors (UMK). Nindyo Pramono, in a seminar at Gadjah Mada University's Faculty of Law, explains that on one hand, the government did not want to change the fundamental concept of limited liability companies that had been known for a long time. However, on the other hand, they wanted to provide a business-strengthening opportunity for UMKs by granting them the status of a legal entity limited company (UGM, 2021).

The business strengthening for UMKs in this context refers to the scenario where UMK entrepreneurs interact with the global community, especially from common-law countries. Indonesia is now prepared to survive and even dominate the economic landscape when dealing with such global interactions. In another of Nindyo Pramono's writings, it is mentioned that often, potential investors from common law countries do not understand or have difficulty comprehending the logic behind establishing a limited liability company based on a minimum of two legal entities through an agreement. In countries like the UK, a known limited company can be established by an individual with only a general shareholder meeting (RUPS) and a director. Some common law countries do not recognize the term "commissioner" at all, so when investing in Indonesia, the commissioner's position is often purely ceremonial (Nindyo Pramono, 2012).

Irma Devita Purnamasari, in the same seminar as Nindyo Pramono, regarding the accommodation of individual UMK actors to establish a company, states in her terms that it is not considered a limited liability company but rather an individual company. Irma

emphasizes that an individual company is an exception to the existing limited liability company legal entities, which have existed based on the concept of an overeenkomst (agreement) (UGM, 2021).

Regarding the specific drafting techniques used in both the Job Creation Law and the Job Creation Regulation in Lieu of Law, there is an interesting point that if UMK actors receive an exception - as a special provision - to also obtain the status of a legal entity limited company, alongside the general requirement that a company is a capital partnership consisting of at least two legal entities. This is also emphasized in the Academic Draft of the Job Creation Law, which states the reason for changing Article 7 of the Company Law is to "Provide room for exceptions for Limited Liability Companies for UMK in Law 40/2007" (Kementerian Koordinator Bidang Perekonomian, 2019).

The question that arises is, "Why does the effort to exempt the establishment of companies based on individual UMK actors require changing the fundamental concept of limited liability companies as stated in Article 1, number 1 of the Company Law, when in the past, the change from Law Number 1 of 1995 to the Company Law - although there were exceptions for an establishment based on two legal entities - did not change the basic concept of limited liability companies at all?"

Kasih and others in the context of exceptions for the establishment of limited liability legal entities (read: individual companies) for micro and small business (UMK) actors have also emphasized that this is not an entirely new concept. This is because Article 7 paragraphs (5) and (7) of the Company Law also make exceptions in cases where the number of shareholders is reduced to one person and for State-Owned Enterprises (BUMN), allowing a single individual to hold the shares of a limited liability company (Kasih et al., 2022).

Barkatullah, in examining the framework of the limited liability company concept—before the issuance of the Job Creation Law and the Job Creation Regulation in Lieu of Law—actually elucidates the legal politics behind it. The formation of limited liability companies consisting of capital associations is based on the notion that the philosophy of business is to use as little capital as possible but strive to maximize profits (Barkatullah, 2017). In other words, it's in line with Jujun Suriasumantri's definition that humans are homo economicus (Suriasumantri, 2013).

Limited Liability Companies, as described by Henry and Reiner in Zarman Hadi, have five structural characteristics (Hadi, 2011):

They have a legal entity form;

They have limited liability;

Ownership of shares can be transferred;

They have centralized management; and

Ownership of shares by capital contributors.

These five characteristics are manifestations of the intent behind the establishment of limited liability companies as business entities seeking maximum profit with minimal capital. On the other hand, the state has positioned itself as a regulator playing a role in ensuring that even with the acknowledgment of the philosophical basis of homo economicus in limited liability companies, control through the law - borrowing the terminology of Sirajuddin, "law as a tool of standard of conduct and law as a tool of social control"—is still implemented to protect the rights of the general public (Sirajuddin, Fatkhurohman and Zulkarnain, 2015). The manifestation of state control in limited liability companies, as outlined by Muchyar Yaya, is embodied in five principles (Yara, 1995):

Shareholder accountability (piercing the corporate veil);
Accountability and capabilities of management (fiduciary duties);
Protection of minority shareholders (personal rights and derivative action);
Creditor protection (capital maintenance doctrine); and
Transparency (disclosure).

These five principles of social control through the law for limited liability companies are known because limited liability companies still adhere to the concept of capital partnership based on an agreement, as elaborated in the Commercial Code (Kitab Undang-Undang Hukum Dagang/KUHD), Law Number 1 of 1995 concerning Limited Liability Companies, and Law Number 40 of 2007 concerning Limited Liability Companies. Of course, this is entirely different from the concept of limited liability companies now regulated in the Job Creation Regulation in Lieu of Law.

The explanation in Table 2 above, which reinforces that individual companies are merely technically inserted (read: slipped in) without altering the principal foundation of the initial concept of limited liability companies, to some extent, indicates inequality in regulatory approaches. The term equivalent in the context of drafting legislation, as used in the preparation of the Academic Draft of the Sexual Violence Elimination Bill, is applied similarly in different contexts, or even conversely, to regulate something different in the same context (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2017). In other words, as Paul Gowder puts it when addressing this issue, the law may treat people equally, but people are not structurally equal in different societal structures (Gowder, 2013).

The same approach of preserving the underlying principles of limited liability companies in the Company Law, at least in this context, has revealed the negligence of the government as the creator of the Job Creation Regulation in Lieu of Law. It may not be an exaggeration to say that even at its inception, the former Chairman of the Nahdlatul Ulama Central Board, once labeled the Job Creation Law as benefiting only the conglomerates (Muhyiddin, 2020). The orientation towards facilitating micro and small businesses should reconsider its concepts and principles, to avoid the emergence of new controversies, especially in the field of business law.

In connection with this, it is important to quote what Friedman stated: “The democratic conception of the rule of law balances individual rights with individual legal responsibilities” (Kamis, 2014). The increasing rights of individual micro and small business actors should be supplemented and strengthened in terms of their regulation, especially those related to legal principles, principles, and rules. Lawmakers are typically more skeptical of capitalism and legal liberalism that merely prioritize individual profit.

Critical Legal Studies (CLS) becomes important to highlight in this context, given its characteristics and underlying philosophy that rejects legal liberalism and capitalism. Legal regulations in this context will be examined skeptically based on the political, ideological, and conflicting interests that occur in the formation process, using approaches such as trashing, deconstruction, and genealogy (Hayat, 2021). In turn, the Job Creation Regulation in Lieu of Law will question the government's commitment to supporting a business environment based on social justice for all Indonesian citizens. The specific focuses highlighted in this article are two-fold: First, the ratio legis of establishing individual companies in the Job Creation Regulation in Lieu of Law; and Second, the perspective of CLS on the normativity of individual companies.

Method

Referring to the hypothesis of this article that highlights the issues of capitalism and liberalism in the Job Creation Regulation in Lieu of Law (Perppu Cipta Kerja), normative legal research with a conceptual approach, statutory approach, and philosophical approach is considered the most appropriate and closest to providing research answers (Amiruddin and Asikin, 2004). The specific primary legal materials identified are the Job Creation Regulation in Lieu of Law and its implementing regulations, both as outlined in Government Regulation Number 7 of 2021 concerning the Facilitation, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (PP 7/2021), as well as Government Regulation Number 8 of 2021 concerning the Authorized Capital of Companies and the Registration of Establishment, Amendment, and Dissolution of Companies Meeting the Criteria for Micro and Small Businesses (PP 8/2021). Secondary legal materials used include journals, books, scholarly articles, and online publications related to the legal issues under examination, while tertiary legal materials consist of legal dictionaries and Black's Law Dictionary.

The technique or method used to collect the various predetermined legal materials above is carried out in the manner of typical library research, involving the processes of editing, organizing, and concluding (Yaniawati, 2020). After the collection of legal materials is completed, the final stage involves the analysis of legal materials based on three Critical Legal Studies (CLS) methods, namely trashing, deconstruction, and genealogy. This will be preceded by an analysis of legal interpretation and legal syllogism (Efendi, 2018).

Discussion

Ratio Legis for the Establishment of Individual Companies in Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation

The use of the legal term “ratio legis” signals the importance of having a clear foundation for the operational definition when discussing the primary focus of this article. The field of positive law education is already quite familiar with this term; "ratio legis" holds a very significant position in analyzing and reviewing a law. Adam Dyrda even mentioned that a reflection on the “ratio legis” opens a 'window' of understanding for legal practitioners, allowing them to find the relevance between legal norms and the underlying philosophy (Dyrda, 2018). Lexically, “ratio legis,” according to Setiawan Widagdo, consists of two meanings: understanding, reason, or cause, and law or legal construct. These two meanings, in simple terms, lead to an understanding that “ratio legis” is the reason a law is created. Gatot Triyanto terminologically defines “ratio legis” as the activity of reasoning (mind) to weigh the reasons and legal constructs of a law or “The occasion of making a law” (Triyanto, 2017). Similarly, Black’s Dictionary states that “ratio legis” is the reason or cause for the enactment of a law (Black, 1968).

A more philosophical perspective, as outlined by Philipus M. Hadjon in Sugiharto's work, describes “ratio legis” as the spirit behind the establishment of a rule (Widagdo, 2012). Every rule, whether written or unwritten, has conditions and situations that signify its formation, either to anticipate future societal issues, address current problems, or accommodate the common sense of justice within society. The spirit underlying the creation of a rule is referred to as “ratio legis” (Sugiharto and Abrianto, 2018).

Based on the understanding of "ratio legis" above, its identification based on the authentic interpretation, explanations, and academic texts of the Job Creation Law (UU Cipta

Kerja)—as there is no academic text for the Perppu Job Creation—becomes essential. It should be noted that the reconstruction of the normativity of limited liability companies according to the academic text of the Draft Job Creation Law (RUU Cipta Kerja) is part of Chapter III, which is the evaluation and analysis of legislation. More specifically, the Company Law (UU Perseroan Terbatas) is a regulation that underwent restructuring with the nomenclature "Clustering of laws for ease of doing business" (Perekonomian, 2019).

Regarding identification based on authentic interpretations or explanations in the Job Creation Regulation in Lieu of Law, it appears that there are too many delegated regulations that rely on government regulations. Therefore, specific reasons or legal politics regarding this issue can be found. The two implementing regulations provide explanations as follows: first, in PP 7/2021, it is mentioned that the normativity of establishing limited liability companies by individual micro and small business actors is aimed at providing protection, ease, and empowerment of micro and small businesses. It is emphasized that these efforts are made based on the strategic role of micro and small businesses—including cooperatives—as pillars of the community's economy, thereby creating jobs, promoting economic equality and growth, and achieving national stability. Second, in PP 8/2021, it is stated that the normativity of establishing limited liability companies by individual micro and small business actors aims to enhance competitiveness and ease of doing business for individuals.

In line with the discussion of limited liability companies as legal entities, it can be understood, by way of a contrario or reverse understanding (Nasir, 2017), that until now, the creators of the Job Creation Law and the Job Creation Regulation in Lieu of Law (Perppu Cipta Kerja) have perceived that the normativity of limited liability companies does not lead to ease of doing business. The lack of ease in doing business is difficult to identify explicitly in the academic text, except for a brief mention in sociological foundations that, through data from the Ministry of Cooperatives and Micro, Small, and Medium Enterprises, it is known that 99% of businesses in Indonesia are in the form of cooperatives and micro, small, and medium enterprises (MSMEs), while on the other hand, 97% of employment is in this sector. This indicates the strategic position of cooperatives and MSMEs in the labor market (Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2020).

It's interesting to note that Murni and Ismi explain that the Government of the Republic of Indonesia changed the concept—development or expansion—of limited liability companies to include individual MSME actors based on data from The World Bank. Many countries still do not have legal entity forms in their trade practices, which results in suboptimal access to funding and profit income. Consequently, state revenue from taxes is also not effectively collected, resulting in substantial missed opportunities (Safitri and Hariyani, 2022). Considering the existence of limited liability companies as legal entities that are also legal subjects (recht persoon), it is closely related to legal entity theories. It is worth noting that the term “rechtspersoon” is a form of personification of a group of individuals within a framework that, if it has purposes, wealth separation, and a division of roles (organization)—some experts do not agree that a legal entity must have an organization (Prananingrum, 2014).

Over time, the course of action that originally only governed how human relationships should be–referred to as norms by Hans Kelsen in this context (Kelsen, 2011)–has been elaborated upon extensively. Historical developments have shown that certain entities,

often identifiable, have rights and responsibilities, particularly in the field of private law. For instance, foundations may own a range of assets managed through buying and selling assets to achieve their goals. Another contextual example is a company that has wealth as capital and then uses that capital to perform various legal actions, such as buying and selling products. A legal subject, as the underlying concept of a legal entity by Setiawan Widagdo, is defined as a legal holder, meaning those who execute or are assigned to carry out things regulated by the law (Widagdo, n.d). Apeldoorn states that individuals or natural persons are inherent legal subjects, while legal entities are artificial legal subjects (Apeldoorn, 2011). Specifically regarding legal entities, Komariah mentions four theoretical foundations used to justify their existence: the fiction theory, the organ theory, the purpose-based wealth theory, and the collective ownership theory (Komariah, 2019), which can be seen as follows (Renggong, 2017):

The fiction theory (fictie theorie) considers a legal entity to be metaphorically or fictionally treated as a legal subject that, in order to conduct its affairs, needs to act like a human being. A legal entity needs knowledge to be cautious and avoid deception, defend itself when compelled, and is highly likely to commit various legal violations. This theory was first introduced by Von Savigny.

The organ theory argues that legal entities are considered legal subjects because they perform functions, roles, and functions similar to human beings. This theory, proposed by Otto von Guericke, explains that, just like the functions of reasoning in the human brain, hand movements, foot control, and other bodily organs, a legal entity (company) also has a General Meeting of Shareholders (GMS), a board of directors, and commissioners that serve similar functions to achieve specific goals.

The purpose-based wealth theory (ambtelijk vermogen) posits that, as a subject, a legal entity has ownership rights allocated for specific purposes. This theory, proposed by Brinz, does not focus on the fundamental concept behind legal entities but rather on wealth ownership orientation rather than the legal entity itself.

The collective ownership theory asserts that a legal entity is a group of individuals with common interests, and to realize those common interests, coordinated actions are required. This theory, proposed by Planioll and Molengraaf, is commonly understood as true that the logic behind it is that if the interests that fundamentally exist within a legal entity can actually be carried out by each natural person, the legal entity has lost its meaning.

The advancement of legal scholarship in the field of law directly related to economic studies has, to some extent, developed several theories that circulate within discussions concerning legal entities, including:

Proprietary theory describes that wealth in business is equivalent to what is within the entrepreneur. Later, its antithesis emerged based on entity theory, which posits that the business conducted should be regarded separately from the personal wealth of the entrepreneur (Somadiyono, 2021).

Public interest theory ensures that the formation of a legal entity represents the desire of society to fulfill their interests. This theory can be identified as an advancement of the collective ownership theory proposed by Molengraaf and Planioll above. The postulate of thought presented by this theory is that legal entities serve as tools to achieve specific goals that benefit society (Arifardhani, 2019).

Protection theory explains that legal entities are formed to protect their owners or managers from personal liability for actions or mistakes made in the course of their business or

activities. In this context, legal entities act as a shield of protection for these individuals (Usanti, 2020).

Economic theory posits that legal entities are established to facilitate economic and business activities. Legal entities are seen as instruments to facilitate trade and investment, as well as to reduce the risks and losses that may occur to individuals involved in economic activities (Winata, 2018).

Normativity of Individual Companies from a Critical Legal Studies Perspective

Legal thinking throughout history has always had its own characteristics and features that set them apart from one another (Fauzia, Hamdani and Octavia, 2021). This is also true for critical legal studies, which serves as the starting point for this research. Anugerah explains that critical legal studies emerged alongside the realism branch of modern legal theory (Ash-shidiqqi, 2021). Legal realism, according to Wibowo T. Turnardy, is a legal philosophy that originated in the United States based on the belief that the law is a manifestation of existing social forces. In stark contrast to positivism, which posits that the law is independent or without the influence of social forces, especially politics, legal realism argues that the law is always shaped and implemented based on social conditions (Turnady, 2021). Nurasiah, in her classification of legal thought movements, mentions that realism falls under the category of modern legal theory. This classification distinguishes it from theories that emerged in classical and medieval times (HRP, 2021). One famous maxim associated with legal realism is Oliver W. Holmes's statement: "the life of law has not been logic, it has been experience" (Rahmatullah, 2021).

Critical legal studies, as a derivative of legal realism, emerged in history in 1977 through the "Conference on Critical Legal Studies" in the United States and in 1984 in the United Kingdom. Munir Fuady further explains that the foundation of critical legal studies was a reaction to the legal practices of the 1960s in the United States and some other European countries, which were seen as overly orthodox. Three major macro-level issues were identified at that time (Fuady, n.d):

Political determinism in legislation and legal practices that prioritized public interests.

Legal education that focused solely on old doctrines without empirical and pragmatic studies.

Inability of the law to address existing social issues.

In addition to these three general factors, Samekto, as explained by Saeful Hayat, outlined that critical legal studies emerged as an antithesis to the liberal, capitalist ideology. American society, which was liberal, only focused on individual human rights and liberties without considering that the exercise of these rights must be proportional and considerate of other individuals. As a result, excessive exercise of one's rights (pure self-interest) could harm others (Hayat, 2021).

Followers of critical legal studies have at least six common views on the law (law in book) (Hayat, 2021):

Rejecting liberalism, where society has become too entrenched in it. Every individual in society needs to realize that there is a social stability that needs to be collectively preserved, rather than just prioritizing oneself.

Reducing fundamental contradictions, meaning that the belief that individual freedom will enhance societal contributions, or the motto laissez faire, laissez aller (let people do as they

choose), needs to be restrained. In this view, the law should not freely absolve someone of their social responsibilities.
Disregarding and delegitimizing liberalism, meaning that the law should not be used as a justification and legitimation of liberalism and capitalism. This perspective believes that norms, principles, and legal theories in practice are monopolized based on tyrannical interests alone through an overly bureaucratic system and therefore need to be set aside.
Rejecting legal formalism, meaning that legal thinking should not be confined to formal logic alone without regard for justice.
Rejecting legal positivism, meaning that legal reasoning should not rely solely on deductive logic – both in the civil law tradition through legislative codification and the common law tradition through stare decisis – when examining a legal case. In this view, the law should be based on an inductive perspective, considering each case individually.
Integrating politics and law, meaning that the law should be formed based on political ideals that support humanity.
To specify further regarding the implementation of critical legal studies' views and the analytical approach, Mulyono, as cited by Hikmahanto Juwana, mentions three approaches (Mulyono, 2015):
Trashing, which involves rejecting established legal principles and norms.
Deconstruction, which involves dismantling the conceptual framework that has existed in a particular law.
Genealogy, which entails tracing the historical background of law formation to identify its true meaning and orientation.
The substitution of discussions on legislation (normativity) related to limited liability companies established by individual micro, small, and medium-sized entrepreneurs (UMK) through the inventory of legal theories, principles, and norms represents the implementation of the trashing step in the critical legal studies approach. Before specific norm-setting in legislation occurs, as explained by Pradjudi Atmosudirjo, there are underlying norms and theories. Furthermore, behind these norms and theories, there are philosophies (principles) that also underlie them (Atmosudirdjo, 2002). I Dewa Gede Atmadja and I Nyoman Putu Budiartha also used the phrase "three layers of legal science," which refers to philosophy, theory, and dogma, as reported by Jan Gissels and Mark van Hocke (Atmadja and Budiartha, 2018).
By using the trashing technique to examine the normativity of limited liability businesses founded by individual micro, small, and medium-sized entrepreneurs (UMK), to use Mukthie Fadjar's phrase, one may discredit legal theories that only support liberalism. According to Critical Legal Studies, individual company theory just supports harmful individual freedom and does not take into account group interests (Fadjar, 2015). According to Hikmahanto Juwana, the trashing approach is the process of breaking down normative legal thinking present in legislation, thus, in the context of this article, It will specify the statutory provisions governing how small and medium sized business owners can form limited liability firms (Mulyono, 2015).

Trashing Approach Analysis

The trashing approach in Critical Legal Studies (CLS) suggests that the principles or legal principles that have been in place are considered tainted by the individualistic-liberal philosophy, laden with capitalist economic systems. In the context of statutory law,

specifically the Omnibus Law on Job Creation, it is necessary to identify the principles and legal principles it contains and then search for which principles are indicative of individualistic-liberalism. Based on the ratio legis of the establishment of individual companies discussed in the first part of this article, the identified legal principles and principles can be classified into two scopes: those related to legal entities and those related to limited liability companies. It is not excessive to mention that the first scope (concerning legal entities) is related to the foundational paradigm principles preceding the concept of the legality of limited liability companies, while the second scope acts as an elaboration of the first scope.

Starting with the analysis of legal principles and principles in the first scope, especially in the concept of forming a legal entity, there appears to be a philosophical inconsistency in the formation of legal entities. For instance, postulating the organ theory as supported by Otto von Guericke, it should be that when someone intends to establish a legal entity, it is necessary to outline and define various components (organs) that constitute the legal entity (Renggong, n.d). Von Guericke's theory does not actually address how a legal entity can be formed from an empty state, but it merely provides recognition to an entity based on the similarity between the organs possessed by humans and those of an association. However, when the opinion of the organ theory is compared with the theory of goal-oriented wealth by Brinz, it will be understood that a legal entity arises because there is a collective will between one person (a legal subject) and others. Since one legal subject cannot fulfill their needs or interests individually, another legal subject is needed (Renggong, 2017).

It becomes even more reasonable if Brinz's concept is juxtaposed with the theory of shared ownership, which states that a legal entity is a group of people with the same interests, so coordinated actions are needed to realize common interests. The shared ownership theory proposed by Molengraaf and Planioll, aside from emphasizing the active contributions of each individual within the legal entity, can also be understood as accountability within a legal entity. Just as a company will profit based on the percentage of capital contributed, the responsibility for losses is also balanced based on the percentage of contributions. This reinforces what Friedman described as a good democratic concept, "The conception of the rule of law, balances individual rights with individual responsibilities" (Kamis, n.d).

The context of a company established by an individual, when confronted with the theory of organs, goal-oriented wealth, and shared ownership, is difficult to find relevance. This includes questions about what difficulties necessitate the transformation of the legal status of individual legal subjects into a legal entity when, from the perspective of realizing their business goals, they do not require the involvement of others. If this is related to ease of doing business because the legal status of a legal entity is more recognized, why not conceive a new legal entity that is more effective than altering the concept of the existing limited liability company? Isn't this confusing considering that the Omnibus Law on Job Creation does not specifically regulate companies established by individuals, while companies formed through agreements have been specifically regulated?

Nevertheless, the answers to the above questions can essentially be explained through elaborative theories in the second scope, namely those related to the principles of entities, public interests, protection, and economics. However, some of these answers cannot be separated from the assumption of favoring the ideology of individualistic liberalism. The entity principle, which states that the wealth held by a legal entity (limited liability

company) is different from what an individual possesses, will orient towards social responsibility when the capital of the legal entity is not entirely owned by individuals.
Applying the entity theory as the basis for implementing individual companies will create potential problems of monopoly, given that every individual – including family, relatives, or partners – can establish individual companies with legal entity status. Furthermore, the separation of capital from personal assets, combined with the absence of internal control functions in the supervisory board as in the case of a limited liability company, usually increases the potential for misuse of limited liability companies.
Regarding the entity theory, the theory of legal protection is also worth questioning. Given that the legal protection referred to is for individual micro, small, and medium-sized entrepreneurs (UMK), will third parties – in this case, the community and investors – also receive protection? This is not clearly reflected in Government Regulation No. 8/2021, so it is expected that various derivative regulations by the relevant ministries will emerge in the future.

Deconstruction Approach Analysis

The second stage in the Critical Legal Studies (CLS) approach is deconstruction, which involves dismantling the well-established legal concepts. In the context of this research, it suggests that all legal concepts related to philosophical foundations and legal theories will be identified and then deconstructed for reevaluation. In this regard, the legal concept under scrutiny is the individual company. It is interesting to note that the term “individual company” is not found in Article 109 of the Omnibus Law on Job Creation. The nomenclature “individual company” is only found in Chapter III of Government Regulation No. 8/2021, but it does not provide a detailed explanation of the legal concept it establishes. Government Regulation No. 8/2021 concerning the Basic Capital of Companies and the Registration of Establishment and Dissolution of Companies that Qualify as Micro and Small Enterprises, when reviewed based on its title, is already consistent in mentioning the nomenclature “companies that qualify as micro and small enterprises.” However, in its body, and even in the definition in Article 1, it does not provide a detailed explanation. Ironically, the regulation uses inconsistent nomenclature by referring to “companies that qualify as micro and small enterprises” as individual companies.
Let us refer to Annex II of Law No. 12 of 2011 concerning the Formation of Legislation (UU 12/ 2011), which determines the role of general provisions in legislation. General provisions serve three functions:
As a definition or understanding;
Acronyms or abbreviations written in a definition or understanding; and/or
Other general matters that apply to the following articles in the body and also reflect principles, intentions, and objectives without needing to be reformulated in subsequent articles.
Based on the explanation of the provisions above, when related to the concept of a "limited liability company," it is clear that the legislation itself does not provide any explanation. The normative concept of individual companies becomes vague because, even in general terms, the term "individual company" is not known. The Indonesian Dictionary (KBBI), which is a collection of official terms within the country, also understands that a company is a trade association (Bahasa, 2023). It is not unreasonable to expect the legislator to define

and limit – deviating from the meaning known in KBBI – the terms "individual" and "company," especially individual companies.

Turning to the formulation of the concept of "companies that qualify as micro and small enterprises" (individual companies) from the perspective of formulating ideal material content in legislation, referring to the provisions of point 63 of Annex II UU 12/ 2011 reveals a deviation. The material content should be fully formulated based on the similarity of the relevant material; however, if there is material that is difficult or cannot be classified, it should be included in the "other provisions" section.

Interestingly, the normativity of individual companies – in terms of establishment, capital, and other aspects – with the same quality as companies formed based on agreements is not regulated in the Omnibus Law on Job Creation. From the outset, Article 1 number 1 of the Omnibus Law on Job Creation has determined two legal entity paths for limited liability companies: through agreements (capital associations) and micro and small enterprises (UMK). These two qualities should have been equally regulated in regulations of equal status. This eventually touches on the principle of good legislation formulation as described in Article 5 letters b, c, and f of Law No. 12/2011, which involves the appropriate institution, type conformity, hierarchy, material content, and clarity of formulation.

The concept of individual companies in the Omnibus Law on Job Creation, Government Regulation No. 7/2021, and Government Regulation No. 8/2021, based on the deconstruction approach, needs to be deconstructed and rebuilt. Considering the fact that the normativity of individual companies is not orderly, both in the formulation of general provisions and the principles of good legislation formulation as described in Article 5 letters b, c, and f of Law No. 12/2011, it is not unreasonable to approach the concept of individual companies with a CLS paradigm – which believes that the formation of regulations is always dominated by the political constellation – as being "infused" with the "evil" intentions of capitalism. This is relevant to what has been discussed in the trashing approach above.

Genealogy Approach Analysis

Genealogy, lexically, means the line of growth or lineage, which, when contextualized in the Critical Legal Studies (CLS) approach, entails determining the initial purpose, historical interpretation, and teleology of a standard relevant to specific businesses (Bahasa, 2016). The identification of the genealogy of individual company normativity can be seen from where and when the concept of individual companies was first known in the international business arena. The first country to embrace the concept of companies that could be established by individuals was the United States. In the early 19th century, several states in the United States, such as New York and Delaware, began enacting laws that allowed the establishment of companies by a single person (sole proprietorship). This concept of individual companies was later adopted by other countries around the world, although the requirements for establishing a company by an individual may vary from country to country. With the development of technology and global business, the provisions for establishing companies by individuals have become more widespread and common in both developed and developing countries (Briggeman, Towe and Morehart, 2009).

The origins of companies that can be established by individuals in the United States and countries with common law legal systems, in general, have become increasingly prominent

over time, in line with the globalization that has taken place. Nindyo Pramono explains that there have often been issues when investors directly interact with the business climate in Indonesia. Neighboring countries, even those nearby like Malaysia and Singapore, find it difficult to invest because the establishment of companies must be done through partnerships (UGM, 2021). The adoption of the concept of companies that can be established by individual micro and small business actors is identified here as arising from the global interaction between Indonesia and the international community that embraces the idea that companies do not have to be formed through capital associations. These countries have dominated and had a strong business influence on the international stage, so it is not unreasonable to consider it as a cultural blending of investment in company formation. The genealogy seen here is the dominant capitalist economic system in controlling the international market. Superpower countries like the United States, France, the United Kingdom (including England, Scotland, Wales, and Northern Ireland), China, Canada, and others have thus changed the perception of the economic system and attempted to influence Indonesia on a macro level and companies on a micro level.

Conclusion

The entire discussion regarding the normativity of limited liability companies after the Omnibus Law on Job Creation in the discourse of Critical Legal Studies (CLS) ultimately leads to two conclusions. First, that the ratio legis for the establishment of individual companies in the Omnibus Law on Job Creation reflects the government's strong desire to facilitate micro and small business (MSB) actors. The government believes that by granting limited liability company status, MSB actors will find it easier to 'survive' on the international stage, leading to job creation and expansion. Second, the normativity of individual companies from the perspective of CLS shows that in the trashing approach, the theoretical foundation of the legal entity experiences inconsistent implementation. In the deconstruction approach, the concept of individual companies undergoes unclear standardization. In the genealogy approach, the ideology of individualism-liberalism with a dominant capitalist economic system is evident.

Considering the importance of facilitating business and ensuring legal protection for MSBs, which are the pillars of the Indonesian economy and society, the Omnibus Law on Job Creation is crucial in this perspective. However, certain issues related to business liberalism need to be skeptically monitored. Those responsible for creating legislation are advised to improve and refine the concept of individual companies based on the principles of good legislative drafting, especially in terms of the appropriateness of the governing body, alignment of content, and clarity of phrasing.

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