



## PRIVATE LIMITED COMPANY IN INDONESIAN POSITIVE LAW: ELABORATING THE BASIC CONCEPT OF CORPORATE LAW, COMPARISON TO OTHER COUNTRIES AND ITS DEVELOPMENT

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### ABSTRACT

The concept of a private limited company was first introduced in the Job Creation Law which is different from the concept of a company in the previous regulation. It is important to dig deeper into the concept of a private limited company: is it possible for a company legal entity to only have a single shareholder or it must be established by a minimum of 2 (two) persons as shareholders? Therefore, this paper applied the normative juridical method, which is believed to be able to answer the aforementioned problem. This paper reviewed the concept of a private limited company juxtaposed with the concept of a company that was in effect before the Job Creation Act and elaborated on the development of company regulations in Indonesian Law. In conclusion, it is found that the basic concept of a private limited company (as a legal entity) can be established by 1 (one) person, as the founder and sole shareholder, that is, as long as the establishment of the company is authorized by the state. Furthermore, the development of company legal arrangements in Indonesian law shows that the law must be responsive to the development of society. This is evident from several changes in the regulation of company law in Indonesia to accommodate the needs of economic development in society.

**Keywords: private limited company; job creation law; the legal concept**

### INTRODUCTION

Law Number 11 of 2020 concerning Job Creation was established using a relatively new method in Indonesia or civil law countries in general, called the *omnibus law* method. This method allows for 10 (ten) policy areas under one law or the so-called one-for-all method.<sup>1</sup> In simple terms, within the body of the Job Creation Act, there are several similar laws and regulations (containing substances related to one another) whose norms or substances are revoked, changed, or added.<sup>2</sup> On one occasion, the Coordinating

Minister for Politics, Law, and Security of the Republic of Indonesia (the Year 2022), Prof. Mahfud MD, explained that omnibus law is a legal term to regulate many things in 1 (one) law.<sup>3</sup> Prof. Mahfud MD further explained that the *omnibus law* term came from a bus in Paris, France, where the bus carried a lot of goods and people to the same place, which is later called an *omnibus*.<sup>4</sup>

Of the many substances regulated, (there are

- 1 Sigit Riyanto, *Kertas Kebijakan: Catatan Kritis Terhadap UU No. 11 Tahun 2020 Tentang Cipta Kerja* (Yogyakarta: Fakultas Hukum Universitas Gajah Mada, 2020).
- 2 Antoni Putra, "Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi" 17, no. 1 (March 2020): 1–10. Furthermore, in Anthoni Purba, it is explained that the omnibus law method is not recognize in Law Number 12 Year 2011 (later amended by Law Number 13 Year 2022 regarding

Law Making), but the omnibus law method is not restricted. Such method applied in order to overcome certain issue, such as over regulated, disharmony, overlapping, sectoral ego and so on. The application of omnibus law must be comply with the principles of transparency, participation, and accountability, instead.

- 3 CNN Indonesia, "Mahfud MD Jelaskan Asal Usul Omnibus Law," *CNN Indonesia* (Jakarta, January 22, 2020), <https://www.cnnindonesia.com/nasional/20200122194415-32-467812/mahfud-md-jelaskan-asal-usul-omnibus-law>.
- 4 Ibid.

10 Job Creation clusters and more than 80 laws)<sup>5</sup> the author focused on the article regarding private limited company (Article 109 of the Job Creation Act). Until now, the Indonesian law regarding the company is regulated in Law Number 40 of 2007 concerning Limited Liability Companies (Law of LLC of 2007) and several articles of LLC Law have been amended by the Job Creation Act. As mentioned above, the Job Creation Act expands the definition of a Company (or in Indonesian terms called "PT") contained in the Law of Limited Liability Company Law of 2007, which is by introduces the concept of a private limited company with limited liability in the definition of a Company.

The idea of forming a private limited company cannot be separated from one of the government's attempts to create and expand job opportunities in the context of reducing the unemployment rate and encouraging the development of Cooperatives and Micro, Small, and Medium Enterprises aiming at improving the quality of the national economy which is expected to improve the social welfare.<sup>6</sup> Based on these objectives, the development of Cooperatives and Micro, Small, and Medium Enterprises as a means to improve the quality of the economy of the society at large is underlined.

In line with the spirit of economic democracy which has been embodied in Law Number 20 of 2008 concerning Micro, Small, and Medium Enterprises (MSME Laws),<sup>7</sup> the purpose of establishing the Job Creation Act is of course expected to carry the spirit of economic democracy simultaneously and increase the empowerment of micro, small and medium enterprises. It is important because, in principle, micro, small and medium enterprises in Indonesia are seen as business mediums that can expand employment opportunities and provide broad economic services to the society,

play a role in the process of equity and improvement of people's income, encourage economic growth, and play a role in realizing national stability.<sup>8</sup>

The arrangement of private limited companies conceptually has a fundamental difference between those stipulated in the Law of Limited Liability Company of 2007 and the Job Creation Act. It can be observed that Article 109 of the Job Creation Act adds the definition of a Limited Liability Company in the Law of LLC of 2007, that [...] *or a private limited legal entity that meets the criteria for Micro and Small Businesses as stipulated in the legislation concerning Micro and Small Enterprises*. Where this provision is not stipulated in the Law of LLC of 2007, instead the criteria for private limited legal entity refers to the MSME Laws.<sup>9</sup>

This concept implies that the definition of Micro and Small Business as regulated in the MSME Law is included in the definition of a Company based on the Job Creation Act. Thus, a private limited company can take the form of a legal entity and own consequences as a legal entity as regulated in the Law of LLC of 2007. This concept is certainly different from the concept of LLC which was known in Indonesian law before the effectiveness of the Job Creation Act, that is in terms of the separation of assets between the owner and the LLC, limitation of liability between the owner and the LLC, the agreement in the establishment of an LLC (which means that it is established by at least 2 persons), an association of capital and others to establish the legal entity of LLC. Thus, the legal consequences will apply to the type of private business entity (private limited company).

In the European Union, the concept of a private limited company has been recognized since the 1980s.<sup>10</sup> The main reason for introducing the concept of a private limited company is to increase the capacity of micro and small enterprises (*the most important reason for making private companies as the principal vehicle for single-member companies was the desire to encourage small and medium-sized enterprises*).<sup>11</sup> The same reason is used in Indonesia

5 Kementerian Koordinator Perekonomian, "Omnibus Law Cipta Lapangan Kerja," 2020, <http://dikti.kemdikbud.go.id/wp-content/uploads/2020/10/Booklet-UU-Cipta-Kerja.pdf>.

6 Indonesia, *Undang-Undang Tentang Cipta Kerja, UU No. 11 Tahun 2020, LN No. 245 Tahun 2020 TLN No. 6537. Bagian Penjelasan, I. Umum*, 2020.

7 Indonesia, *Undang-Undang Tentang Usaha Kecil, Mikro Dan Menengah, UU No. 20 Tahun 2008, Bagian Penjelasan I. Umum*, 2008.

8 Ibid.

9 Ibid., art. 1 dan 2.

10 Muzaffer Eroglu, "Single-Member Companies in Turkish Law," *Legal Hukum Dergisi*, no. 64 (July 11, 2008): 1269.

11 Ibid. dalam Vanessa Edwards, *The EU Twelfth Company Law Directive*. (7 Company Lawyer 211, 1998)

to establish the concept of a private limited company in its national law in 2020 through the Job Creation Act. The reason in question is as conveyed by the Minister of Law and Human Rights in 2022, Yasonna Laoly, in an opportunity to launch an online private limited company service, that the concept of a private limited company in the Job Creation Act is a business legal entity that can be established by one person and is *one-tier*, that is the founder of the company who also serves as a shareholder and director in the absence of a commissioner.<sup>12</sup> This concept is a differentiator from the concept of a private limited company adopted in several other countries. Furthermore, the concept of a private limited company is pursued to encourage Indonesian human resources to have the mindset of becoming business actors and to open new job opportunities professionally.<sup>13</sup>

Academically, this is a new and different matter for the company legal order that applies in Indonesia based on the arrangements before the Job Creation Act. Although the practice of private limited company has been applied in several countries in the world (such as the European Union, United Kingdom, Singapore, and Malaysia), it is a new thing in Indonesia, even the Minister of Law and Human Rights, as mentioned earlier, conveyed that a private limited company under the Job Creation Act is a “typical Indonesian” private limited company.<sup>14</sup>

This paper is different from a study with a similar theme previously published by Muhammad Faiz Aziz and Nunuk Febrianingsih, entitled “Realizing a Private Limited Liability Company (PT) for Micro and Small Enterprises (UMK) through the Bill of Job Creation Act” in the *Journal of Rechtsvinding*, Vol. 9 No. 1 the Year 2020, which adeptly reviews the opportunities and challenges of private limited companies in Indonesia and how

they are practiced in several countries.<sup>15</sup> This paper emphasizes the basic concept of a company which is an association of capital that does not pay attention to the personality of the founder(s) of the company. Furthermore, this paper briefly reviews the concept of a company in several countries that adhere to the common law and civil law systems and describes the development of company law arrangements in Indonesia in the Commercial Code (KUHD) to the Job Creation Act.

Another publication on a similar theme to this paper is an article entitled “Private Limited Liability Company and Legal Responsibilities of Shareholders Based on the Job Creation Act” by Yuliana Duti Harahap, Budi Santoso, Mujiono Hafidh Prasetyo in the *Journal of Notarius* Vol. 14 No. 2 the Year 2021.<sup>16</sup> The similarity is contained in one of the problem formulations which is regarding the development of company regulations in Indonesian law. Overall, the material of this paper is different in terms of elaboration on the development of regulations for the company and the discussion of the legal responsibilities of shareholders (as discussed in the writings of Yuliana Duti Harahap, et al). As mentioned above, this paper places more emphasis on the basic concept of the company as a legal reason (*ratio legis*) to justify the concept of a private limited company in the Job Creation Act and discusses specifically the development of company regulations as implications of implementing the basic concept of the company. This is what distinguishes this paper from the writing by Yuliana Duti Harahap, et al.

In addition, there is a publication in the journal of *Arena Hukum* Vol. 15 No. 1 the year 2022, by Desak Putu Dewi Kasih, et al entitled “Private Limited Company Post Job Creation Act: Changes in Paradigm of Limited Liability

12 *Keynote Speech Menteri Hukum Dan HAM Bertajuk Implementasi Kebijakan Pemerintah Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja: Launching Aplikasi Perseroan Perorangan* (Bali: Direktorat Jenderal AHU Kementerian Hukum dan HAM, Oktober 2021).

13 Ibid.

14 “Mengenal Konsep Perseroan Perseorangan Di Indonesia,” <https://www.kemenkumham.go.id/Berita/Mengenal-Konsep-Perseroan-Perseorangan-Di-Indonesia>, March 20, 2021.

15 Muhammad Faiz Aziz and Nunuk Febrianingsih, “Mewujudkan Perseroan Terbatas (PT) Perseorangan Bagi Usaha Mikro Kecil (UMK) Melalui Rancangan Undang-Undang Tentang Cipta Kerja,” *Jurnal Rechtsvinding* 9, no. 1 (April 2020): 97.

16 Yuliana Duti Harahap, Budi Santoso, and Mujiono Hafidh Prasetyo, “Pendirian Perseroan Terbatas Perorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja,” *Jurnal Notarius* 14, no. 2 (2021): 725–738.

Companies as Association of Capital”, which shares a similar theme to this paper.<sup>17</sup> The paper also examines the basic concept of the company which emphasizes the association of capital and the changes in paradigm regarding the company in Indonesian law. What distinguishes this paper is that it is more of an elaboration of the basic concepts of company law which are the *ratio legis* of the private limited company concept adopted in the Job Creation Act. In addition, this paper also describes the development of company regulations from the Commercial Code (KUHD) to the Job Creation Act along with related regulations and derivative rules.

Departing from the foregoing background, the problem formulated in this paper are: (1) How is the basic concept of a company compared to the concept of a private limited company in Law Number 11 of 2020 concerning Job Creation and a comparative description of the concept of a private limited company in several other countries? and (2) How is the development of company regulation in Indonesian law?

## RESEARCH METHOD

This research was a normative juridical type (normative legal research), which is a legal research study that examines or explores aspects or problems contained in Indonesian law.<sup>18</sup> Normative juridical legal research essentially studies laws that are conceptualized as norms or rules applied in society and become a reference for everyone’s behavior.<sup>19</sup> Furthermore, according to Soerjono Soekanto and Sri Mamudji, normative legal research (juridical normative) is legal research carried out by examining library materials or secondary data.<sup>20</sup> Thus the material studied in this paper is

library material or secondary data. In addition, methodologically, the author mentioned a little about the legal comparison method. It is said a little because the author only cites the legal concept of private limited companies in various countries under *civil law* and the *common law* system. The author realized that comparative law is more than just what is contained in this paper, as outlined by Soerjono Soekanto that comparative law is a branch of science that compares legal systems that apply in one or several societies.<sup>21</sup>

The author conducted a hierarchical data analysis, starting from Indonesian legal norms, and relevant doctrines (scholars’ opinions).<sup>22</sup> The author uses qualitative data analysis techniques by analyzing the quality of data in the form of regular, coherent, logical, non-overlapping, and effective sentences to facilitate data interpretation and comprehension of analysis results.<sup>23</sup> As mentioned above, the data in this paper are concepts, theories, laws and regulations, doctrines, legal principles, expert opinions, or the author’s own opinion, so it requires a data analysis technique that can answer such problems, explain the suitability of the theory, and support the writing arguments.<sup>24</sup> This technique is considered relevant to explain the conceptual aspects of private limited companies in Indonesian law.

## DISCUSSION AND ANALYSIS

### A. The basic Concept of a Company in Juxtaposition with the Concept of a Private Limited Company in Law Number 11 of 2020 concerning Job Creation

The Indonesian legal system so far recognizes that an LLC is established by a minimum of 2 (two) persons, based on an agreement, and so on.<sup>25</sup> This provision is amended by the stipulation of Article

17 Desak Putu Dewi Kasih et al., “Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal,” *Jurnal Arena Hukum* 15, no. 1 (April 2022): 34.

18 Kornelius Benuf and Muhamad Azhar, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *Jurnal Gema Keadilan* 7, no. 1 (June 2020): 23.

19 H. Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi* (Bandung: Alfabeta, 2017), 66.

20 Soerjono Soekanto and Sri Mamudji, *Penelitian*

*Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2010), 13–14.

21 Purnadi Purbacaraka and Soerjono Soekanto, *Perihal Kaedah Hukum* (Bandung: Alumni, 1982), 11.

22 Benuf and Azhar, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” 27.

23 Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis, Serta Disertasi*, 69.

24 Bachtiar, *Metode Penelitian Hukum* (Banten: Unpam Press, 2018), 138.

25 *Indonesia, Undang-Undang Tentang Perseroan Terbatas, UU No. 40 Tahun 2007*, 2007.

109 of the Job Creation Act which includes a private business entity in the form (definition) of a company. For this reason, the author attempted to find the conceptual level of the company based on related legal theories, such as the pure theory of law (Hans Kelsen) and the theory of elements of law (Gustav Radbruch).<sup>26</sup>

Another analytical tool to strengthen the conceptual level of the company is the doctrines from the literature on companies that develop in other countries. This is intended as a basis that strengthens the argument that the formation of a company does not always require 2 (two) persons or more, but rather emphasizes the existence of a separation of capital or an association of capital that is separated from the private founder of the company and the ratification by the state.

#### Normative Legal Issues

The author opined that the expansion of the definition can affect not only the practical level but also the conceptual level, where so far the concept of a company in Indonesian law is that to establish a company carried out by a minimum of 2 (two) founders who promise to establish a legal entity. There is (if it can be said to be) a conflict between the norms in the concept of a company regulated before the existence of the Job Creation Act and the company regulation in the Job Creation Act. The author called it a conflict of norms because the definition of a company regulated in the Job Creation Act and the previous laws and regulations (regarding the company) are conceptually different, although, in the case of an association of capital company (in Indonesian term it is called Perseroan Persekutuan Modal according to Article 2 paragraph (1) of the Regulation on the Ministry of Law and Human Rights of the Republic of Indonesia), the concept used is still the same as that regulated under the Law of Limited Liability Company (the association of capital company term appears in Article 2 paragraph (1) of the Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of Limited Liability Company Legal Entities (Permenkumham No. 21/2021)).

To straighten out the conflicting norms,

26 Hans Kelsen, *Pure Theory of Law Terjemahan Oleh Max Knight* (Berkeley, Los Angeles: University of California Press, 1967), 30–31.

the principles regarding the company can be reviewed.<sup>27</sup> Therefore, the author explored the principles regarding the company from various kinds of literature and doctrines related to private legal entities (private limited companies), apart from the provisions of the laws and regulations that have historically governed the company.

#### Principles of Substances of Regulation

The substance of regulation regarding the concept of a private limited company is contained in Article 109 paragraph (1) of the Job Creation Act jo. Article 1 number 1 of the Limited Liability Company Law of 2007. The two articles regulate the definition of a Limited Liability Company (company). The details of the regulations in the two laws are as follows:

**Table 1. Definition of a Company According to the Limited Liability Company Law and the Job Creation Act**

Comparison between the Definition of Company	
Law No. 40 of 2007 concerning LLC	Law No. 11 of 2020 concerning Job Creation
A Limited Liability Company hereinafter referred to as a company, is a legal entity that is an association of capital, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in this law and its implementing regulations.	A limited liability company, hereinafter referred to as a Company, is a legal entity that is an association of capital, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares or Private Limited Company that meet the criteria for Micro and Small Businesses as stipulated in the legislations concerning micro and small business

Source: Law Number 40 of 2007 concerning Limited Liability Companies and Law Number 11 of 2020 concerning Job Creation, 2007 and 2020

Furthermore, in the derivative regulations of the Job Creation Act, for example, Government Regulation Number 8 of 2021 concerning Authorized Capital of Companies and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro

27 Arief Sidharta, “Bila Hukum Positif Bertentangan Dengan Asas Hukum,” Agustus 2022, <https://www.hukumonline.com/klinik/a/bila-hukum-positif-bertentangan-dengan-asas-hukum-lt52d0d2e4afc2c>.

and Small Businesses (PP No. 8/2021) and Permenkumham No. 21/2021 it is further explained that a company that meets the criteria for Micro and Small Business may consist of: (1) a company established by 2 (two) or more people; and (2) private limited company established by 1 (one) person. Minister of Law and Human Rights Regulation No. 21/2021 stipulates that a company consists of (1) an association of the capital company; and (2) a private limited company.<sup>28</sup>

Based on those three laws and regulations, it can be classified that the company model known in Indonesian law today is a company that meets the Micro and Small Business Criteria (established by 1 (one) person or a private limited company, or established by 2 or more persons), and an association of the capital company or an association of capital legal entity which is established on an agreement and carries out business activities with authorized capital which is entirely divided into shares. According to the author, the definition of an association of a capital company is as regulated in the Limited Liability Company Law of 2007, and the definition of a private limited company is the definition of a company according to the Job Creation Act. The classification of an association of a capital company and a private limited company is made by lawmakers (in this case Permenkumham No. 21/2021) to provide clearer guidelines at the technical level and prevent confusion among the society in concern with the legislation.

## **B. Development of Company Regulations in Indonesian Law**

Considering the wide scope of the regulation, the author limited the comparison of the scope of the regulation to matters deemed relevant to the basic concept of the company, which are: (1) definition of the Company; (2) procedures for the establishment of Company; (3) Company's Organs; (4) separation of responsibilities within Company; and (5) the dissolution of Company. The author reviewed several laws and regulations related to the company as mentioned above. Then, the division

of development of company regulations consists of (1) company regulations in the Dutch East Indies Law and the Commercial Code, and (2) modern company law (Law Number 1 of 1995 concerning Limited Liability Companies or LLC Law of 1995 to Job Creation Act).

### Company Regulations during the Dutch East Indies Period and the Commercial Code (KUHD)

The law adopted by a particular nation is an expression of the soul by the conditions at the time the rules were drawn up. Such conditions make the law of a nation different from the law of other nations, especially in the characteristics of the development of each legal system.<sup>29</sup> Regulations regarding companies in Indonesia are subject to the first Book of Chapter III Part I of the Commercial Code or *Wetboek van Koophandel* (WvK), *Staatsblad* 1847:23.<sup>30</sup>

The enforceability of the Commercial Code is based on the principle of concordance, which is applying the Dutch East Indies Laws to the Indonesian population during the Dutch colonial period.<sup>31</sup> Previously, the Dutch East Indies law applied to the Indonesian population group was the Indonesian Shared Airline Ordinance (*Ordonantie op de Indonesische Maatschappij op Aandeelen*, *Staatsblad* 1939;569 jo. 717), while the Dutch East Indies law which applies to the European Group or its equivalent is the Commercial Code.<sup>32</sup> The dualism of the regulation was valid in Indonesia until the issuance of the LLC Law of 1995.

Looking at the history of company law in Indonesia, is inseparable from the early period of the entry of the Dutch government into Indonesian territory in the 16<sup>th</sup> century. Dutch

<sup>28</sup> *Indonesia, Peraturan Menteri Hukum Dan Hak Asasi Manusia Republik Indonesia Tentang Syarat Dan Tata Cara Pendaftaran, Pendirian, Perubahan, Dan Pembubaran Badan Hukum Perseroan Terbatas*, 2021.

<sup>29</sup> Syahrullah, "Sejarah Perkembangan Perseroan Terbatas," *Jurnal Fundamental: Jurnal Publikasi Hukum* 8, no. 1 (June 2020): 68.

<sup>30</sup> Nindyo Pramono, *Perbandingan Perseroan Terbatas Di Beberapa Negara* (Jakarta: Pusat Penelitian dan Pengembangan Sistem Hukum Nasional, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2012), 1.

<sup>31</sup> Munir Fuady, *Perseroan Terbatas Paradigma Baru* (Bandung: PT. Citra Aditya Bakti, 2003), 37.

<sup>32</sup> Yulita Islamiati, "Syarat Yang Harus Dipenuhi Akta Pendirian Dan Anggaran Dasar Perusahaan Perseroan Terbatas Menurut Undang-Undang Nomor 1 Tahun 1995" (Skripsi, Fakultas Hukum Universitas Muhammadiyah Palembang, 2006), 2-3.

applied a business tool named *De Vereenigde Oostindische Compagnie* (VOC) or *The Dutch East India Company* or the East India Trade Association, which operated from 1602 not only in Indonesia but also in other regions, such as Cape Town in South Africa, Malabar, Coromandel Coast in India, Bengal, Southeast Asia, to Taiwan (Formosa) and Japan.<sup>33</sup> The VOC concept at that time was similar to the company concept known today, which is the separation of responsibilities, capital, and organs in the VOC structure.<sup>34</sup>

The regulation regarding the company is contained in Article 36 to Article 56 of the Commercial Code or a total of 21 articles. The provisions in the Commercial Code are also related to the applicability of the *Burgelijk Wetboek* or BW or the Civil Code, as stated in Article 1 of the Commercial Code. The link is contained in the provisions of Article 1233 to Article 1356 of the Civil Code and Article 1618 to Article 1652 of the Civil Code (which regulates the form of a Civil Partnership or *Maatschap* or *partnership*).<sup>35</sup>

Thus, the provisions in the KUHD do not stand alone but recognize the enforceability of the Civil Code as long as there are no special deviations. The Commercial Code can be said to be one of the sources of company law in Indonesia in addition to customs and jurisprudence as a source of steady law. It can be understood that commercial law is the law of obligations that arises specifically from the field of the company.<sup>36</sup> Thus,

the relationship between the company regulations in the Commercial Code and the Civil Code is that the Commercial Code is a special civil law (regulating business or trade affairs) while the Civil Code regulates civil matters in general.<sup>37</sup>

#### Regulation on Companies in the Contemporary Era (LLC Law of 1995 to Job Creation Act)

The first and basic arrangement for the company concept amended in the Job Creation Act is contained in Article 109 paragraph (1) of the Job Creation Act which amends the provisions of Article 1 point 1 of the Limited Liability Company Law of 2007. The amendment is to expand the definition of a company, which was originally a legal entity of an association of capital as stated in Article 1 point 1 of the Limited Liability Company Law, to be added or expanded with the formulation: ... *or private Legal Entities that meet the criteria for Micro and Small Enterprises as regulated in the legislations concerning Micro and Small Enterprises*. This definition is not recognized either in the Commercial Code, the LLC Law of 1995, or the LLC Law of 2007.

The legal implication is that the company is no longer only in the form of two persons who bind themselves in an agreement which is then ratified through a notarial deed. The provisions regarding a company that must be established by 2 (two) or more persons do not apply to companies that meet the criteria for Micro and Small businesses or private limited companies, other than other forms of business entities such as state-owned companies, Regionally Owned Enterprises, Village-Owned Enterprises, and companies that manage stock exchanges, clearing and guarantee corporations, depository and settlement institutions, and other institutions under the Law on the Capital Market. Individuals who create or own a business can also apply for the approval of their business entity as a company legal entity to the Minister of Law and Human Rights.<sup>38</sup> As for applying for the legalization of a private limited company, it is no

33 Peter Boschberg, *The Dutch East India Company (VOC) in South East Asia* (Oxford University Press, 2021), Summary. VOC dirintis pertama kali pada Tahun 1594 dan baru resmi didirikan pada 20 Maret 1602 dengan Oktroi VOC yang terdiri dari 6 (enam) kamar, yaitu Amsterdam, Zeeland, Enkhuizen, Delft, Hoorn, dan Rotterdam. (Syahrullah, *op.cit.*, hlm. 70 dalam Parameshwara, *Kriminalisasi Terhadap Direksi dalam Pengurusan Perseroan Terbatas*, Disertasi Program Doktor Ilmu Hukum Universitas Sumatera Utara, 2017, hlm. 57.)

34 Syahrullah, "Sejarah Perkembangan Perseroan Terbatas," 70.

35 M. Udin Silalahi, *Badan Hukum Organisasi Perusahaan* (Jakarta: STIH IBLAM, 2005), 7.

36 Ni Made Pratiwi Dharnayanti, "Hubungan Hukum Perusahaan Induk Berbentuk Perseroan Terbatas Dengan Anak Perusahaan Berbentuk Persekutuan Komanditer," *Jurnal Ilmiah Prodi Magister Kenotariatan, Acta Comitas* 1 (2017): 68.

37 Janus Sidabalok, *Hukum Perusahaan (Analisis Terhadap Pengaturan Peran Perusahaan Dalam Pembangunan Ekonomi Nasional Di Indonesia)* (Bandung: Nuansa Aulia, 2012), 88.

38 *Indonesia, Undang-Undang Tentang Cipta Kerja, UU No. 11 Tahun 2020, LN No. 245 Tahun 2020 TLN No. 6537. Bagian Penjelasan, I. Umum*, art. 109 ayat (2).

longer represented by a notary but is carried out by the founder electronically.<sup>39</sup> This is because the organ in a private limited company is *one-tier*, that is the founder as the sole shareholder and concurrently the director in the absence of a commissioner.<sup>40</sup>

#### Analysis of the Basic Concept of the Company Compared to the Concept of a Private Limited Company in the Job Creation Act

The analytical framework in this section is as follows: (1) theory regarding legal entity and single shareholder; (2) the concept of a business entity; and (3) aspects of justice, certainty, and legal benefits related to the regulation of the private limited company.

##### a) Theory of Legal Entity and Single Shareholder

The law that first recognized the company as a legal entity was the Limited Liability Company Law of 1995.<sup>41</sup> Previously, the Commercial Code (in Article 40 paragraph (2) of the Commercial Code) did not explicitly regulate the company as a legal entity but emphasized that the shareholders were only responsible for their contribution to the company. Furthermore, the limitation of liability between the holder (capital holder) and the company was a characteristic of the company that distinguished it from the form of enterprise or business “vehicle” at that time, for example, a Civil Partnership (*maatschaap*).<sup>42</sup>

The affirmation of the company’s status as a legal entity emerged due to the spiritual nuances during the preparation of the LLC Law of 1995 which was the pressure of scholars

to regulate the company as a legal entity.<sup>43</sup> The pressure was not baseless, a company can be said to be a legal entity because it meets the requirements of a legal entity, namely the formal requirements and material requirements of a legal entity. The formal requirements of a legal entity consisting of:<sup>44</sup> (1) the company is a well-ordered organization; (2) owns assets; (3) has its interests (long-term interests); (4) has its purpose. Meanwhile, what are classified as formal requirements of a legal entity are procedural matters, which in the context of a company consist of:<sup>45</sup> (1) establishing the company by 2 (two) or more persons; (2) drawing up a deed of establishment ratified by a notary in Indonesia; (3) being ratified by the state through the Minister of Law and Human Rights; (4) being registered and announced in the Supplement to the State Gazette of the Republic of Indonesia. The material and formal requirements are contained in the characteristics of the company, which is therefore classified as a legal entity. In comparison with the UK, for example, it also shows the character of a legal entity in a company (or in the UK it is called a *Limited Liability Company* or LLC).

As a legal entity, the company emphasizes the partnership of capital and not the personality traits of the person (*natuurlijk persoon*) behind it.<sup>46</sup> This is in line with the company’s goal, which is to raise as much capital as possible to get the maximum profit. Furthermore, in terms of the theory of legal entities, this conception is in line with the theory of legal entities proposed by A. Brinz and F.J van Heyden, called Purpose Theory (*Doel Vermogens Theorie*).<sup>47</sup> The theory states that a legal entity does not consist of members who are legal subjects but emphasizes the existence of wealth that has a

39 Permenkumham No. 21 Tahun 2021 BN No.470 Tahun 2021, art. 13.

40 Keynote Speech Menteri Hukum Dan HAM Bertajuk Implementasi Kebijakan Pemerintah Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja: Launching Aplikasi Perseroan Perorangan.

41 Badan Pembinaan Hukum Nasional, *Naskah Akademik Rancangan Undang-Undang Badan Usaha* (BPHN, 2018), 10.

42 Fahrurrozi, “Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, Dan Menengah Berbadan Hukum Dengan Gagasan Pendirian Perseroan Terbatas Oleh Pemegang Saham Tunggal,” *Jurnal Rechtsvinding* 7, no. 3 (Desember 2018): 455.

43 Badan Pembinaan Hukum Nasional, *Naskah Akademik Rancangan Undang-Undang Badan Usaha*, 10.

44 Freddy Harris and Teddy Anggoro, *Perseroan Terbatas: Kewajiban Pemberitahuan Oleh Direksi* (Bogor: Ghalia Indonesia, 2010), 14.

45 Nyulistiowati Suryanti, *Ruang Lingkup Hukum Perusahaan*, 2015, 24.

46 Fahrurrozi, “Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, Dan Menengah” (Tesis, Universitas Indonesia, 2016), 23.

47 Suryanti, *Ruang Lingkup Hukum Perusahaan*, 22–23. Lihat juga Cahyani Aisyiah, *Implikasi Ketidadaan Akta Notaris pada Pendirian, Perubahan, dan Pembubaran Perseroan Perorangan*, (Majalah Hukum Nasional, Vol. 51, No. 1, 2021), hlm. 52.

specific purpose. Therefore, based on the Purpose Theory, a company legal entity can be established with only 1 (one) founder, as long as there is wealth collected or included in the company.

Another theory that explains the personality status of a company's legal entity is the theory of Eric W. Orts in his book *Business Persons: A Legal Theory of the Firm*.<sup>48</sup> Orts emphasized that there are at least 3 (three) theories that can explain the status of a company's legal entity with a focus or emphasis on the source of the corporate legal personality. The first theory, *concession theory* or *persona ficta theory*, views that the legal entity status of a company is granted by the government as the authority that certifies the legal entity status of the company (*lawgiver*) *top down*.<sup>49</sup> On the opposite, *participant theory*, which is *bottom-up*, views that a company is made up of individual people who compromise them with the main focus on individual participants.<sup>50</sup> The third theory is *institutional theory* or *real entity theory*, which views that a company is established based on legal rules, is organized, and is run by individual people.<sup>51</sup>

The three theories of Orts, although their focuses are different, basically emphasize the existence of state authorization in determining the legal entity status of the company.<sup>52</sup> Furthermore, in participant theory, the source of this theory is private law, which is related to the principles of contracting and agency relating to individual actors. The activities of a company are determined by the existence of contracts and representatives acting for and on behalf of the company (agency) concerning third parties.<sup>53</sup> According to *institutional theory* or *real entity theory*, the legal entity status of a company is recognized by law when there is an existing organization. Even though a company does not operate in carrying out its activities, it is still legally recognized as a legal entity.<sup>54</sup> In the *concession theory*, a company will

only have the legal entity status if the legal entity status is granted by or sourced from the state, thereby limiting the liability between the founder and the company as a legal entity.

Associated with the concept of a private limited company, the theory confirms that a private limited company obtains legal entity status after obtaining a deed of establishment from the Minister of Law and Human Rights.<sup>55</sup> Regardless of the persona or personality of the company in the eyes of the law, the determining point for the legal entity status of a company is when the company is granted legal entity status from the state.

By Indonesian law, the nature of the company as an association of capital is regulated in Article 1 paragraph (1) of the Limited Liability Company Law, which is one of the elements of the company in addition to (1) being a legal entity; (2) being established by agreement; and (3) conducting activities with authorized capital divided into shares. As mentioned above, the association of capital means an emphasis on capital or wealth that is included in the company, the wealth is then converted into the form of shares that can be traded for the benefit of the company in carrying out its business activities.<sup>56</sup> When juxtaposed with arrangements in other countries, for example in the United States, according to Stephen L. Bainbridge, the characteristic of a company or LLC in the United States is the existence of an association of capital as a condition for establishing an LLC. Furthermore, according to Bainbridge, a company in the United States can be established by one person.<sup>57</sup>

If it is oriented to the UK, the regulation that a company can be established only by 1 (one) person is contained in the *UK Companies Act 2006*, which is a follow-up to the European Union Agreement which regulates company law in European Union countries. The form of a Private Limited Company with limited liability in the UK is called a Private

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48 Susan Mary Watson, "The Corporate Legal Person," *Journal of Corporate Law Studies* 19, no. 1 (2019): 5.

49 Eric W. Orts, *Business Person; A Legal Theory of the Firm* (Oxford University Press, 2013), 12.

50 Ibid., 12–13.

51 Ibid., 14.

52 Watson, "The Corporate Legal Person," 29–30.

53 Ibid., 29.

54 Ibid.

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55 *Permenkumham No. 21 Tahun 2021 BN No.470 Tahun 2021*, arts. 13–14.

56 Fahrurrozi, "Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, Dan Menengah Berbadan Hukum Dengan Gagasan Pendirian Perseroan Terbatas Oleh Pemegang Saham Tunggal," 458.

57 Stephen M. Bainbridge, *Limited Liability Companies: A Primer on Value Creation Through Choice of Form, Corporation, and Economics* (Los Angeles: Foundation Press, 2001), 3.

Limited Company (PLC). This concept is different from the sole trader concept, where the sole trader in the UK is a form of private business that has no separate legal identity of its own between the business “vehicle” and its founder or is referred to as an unincorporated business organization.<sup>58</sup> The PLC concept is incorporated into business organizations, which separates the responsibilities between the founder and the company. PLC organ consists of at least 1 (one) director and 1 (one) shareholder, where the director and shareholder can be occupied by the same person.

In Serbia, the concept of one-man private and public limited liability companies has been recognized, as regulated in the European Union’s Twelfth Company Law Directive.<sup>59</sup> Serbia defines a *corporation is a legal person that is established by legal and/or natural persons by articles of association for the purpose of conducting activities with the aim of gaining profit*.<sup>60</sup> This definition emphasizes the characteristics of a company which is a legal person, formed by law, and to gain *profit*. In *legal personality*, Serbia also adheres to the concept of limited liability *piercing the corporate veil*.<sup>61</sup> This model is the concept of a company in general, but from the side of the founders of the company, the establishment of a company in Serbia has the possibility of being established by only one person. The founder can be an individual or legal entity (legal or natural person) or individuals and legal entities jointly as founders of the company.

In the Netherlands, based on the 1992 *Nieuw Burgerlijk Wetboek* (Dutch Civil Code), it is possible to establish a company by 1 (one) person. The provision is contained in Book-2 on Legal Persons, Title 4, Part 1 Article 64 paragraph 2, stating: *a company shall be incorporated by one or more persons by notarial*

*deed*. So, the establishment of a private limited company is possible by 1 (one) person or more by using a notarial deed. This is different from the concept in Indonesia, where the establishment of a private limited company does not require a notarial deed but is registered directly by the founder to the state.

The concept of a company in Germany refers to a *Private Limited Liability Company* or *Gesellschaft mit beschränkter Haftung* (GmbH). This concept was not known before the publication of the *Twelfth Company Law Directive* but began to be recognized starting in 1980.<sup>62</sup> A company in Germany is generally defined as ... *companies with limited liability may be formed for any lawful purpose by one or more persons*. The definition limits the meaning of the company that the company has limited liability, can be established as long as it is under legal regulations, and can be established by one or more people. Uniquely in Germany, the *ultra vires* doctrine is not known, in the sense of GmbH, it can be formed without object limitations, so that it can carry out profit-oriented or non-profit-making activities.

As mentioned above, the founder(s) of GmbH is made possible by 1 (one) person (*the total share capital may be subscribed to by only one shareholder, in that case, only one share in an amount corresponding to the total share capital is issued*).<sup>63</sup> Interestingly, the concept of corporate law in Germany, in this case, GmbH, can be converted into GmbH & Co. KG. The conversion of the GmbH form is possible in the case that *a conversion is only permissible if all of the shareholders of the converting entity prior to the conversion are shareholders of the entity after conversion and vice versa*. The regulation on the conversion of the legal entity form of the company is also known in Indonesian law, in which if a Private Limited Company: (1) has more than 1 (one) shareholder; and (2) no longer meets the criteria for Small and Medium Enterprises as stipulated in the legislation, then the legal entity status must be changed to an association of capital company.<sup>64</sup>

#### b) Concept of Business Entity

62 Ibid.

63 Klaus J. Muller, *The GMBH- A Guide to the German Limited Liability Company*, Second Ed., 2009, 9.

64 Permenkumham No. 21 Tahun 2021 BN No.470 Tahun 2021, art. 17 ayat (1).

58 Lucy Jones, *Introduction to Business Law*, Second Edition. (UK: Oxford University Press, 2013), 489.

59 Beretka Katinka, “Concept of Single Member Companies in the Light of EU Harmonization – Comparative Analysis of Serbia, Germany, United Kingdom” (LLM Short Thesis Course, Central European University, 2010), 9.

60 Ibid., 10.

61 Ibid.

The author views the importance of the study of business entities to describe the position of a private limited company as a “business vehicle” that is recognized in legal traffic. Conceptually, there are 2 (two) forms of business entities, namely unincorporated and incorporated legal entities.<sup>65</sup> In Indonesia, the term business entity is commonly referred to as a company (both incorporated or unincorporated legal entity).<sup>66</sup> As a colony of the Dutch colonial government, the form of company in Indonesia was more or less influenced by the form of company introduced by the Dutch in Indonesia, since the VOC era. The characteristics of an unincorporated legal entity can be seen from its simple company structure, the scale of the business that is not too large, and the parties involved in the company are persons who are close to the founders of the company.<sup>67</sup> So it can be imagined that an unincorporated legal entity is a small (or home-based) company and is managed simply. For example, in Indonesia, many businesses run under the Trade Business label, which are simple individual businesses, not legal entities, and often operate in the business sector that is close to the daily needs of the society, such as photocopying, basic necessities, grocery traders, salon, and so on.<sup>68</sup>

Indonesian law regulates the form of unincorporated business entities in several provisions, including the Civil Code and the Commercial Code. Based on these regulations, the forms of unincorporated business entities in Indonesia are:

- a. Private Limited Company or Trading Company (PD), regulated in Article 1618-1646 of the Civil Code together with the arrangement of civil partnership or *maatschaap*;
- b. Limited Partnership or *Commanditaire Vennotschaap* or CV, regulated in Article 19 of the Commercial Code;
- c. Firm (Fa), regulated in Part Two of Chapter

3 of the Commercial Code mixed with the provisions of limited partnership in Articles 16-35 of the Commercial Code;

- d. Civil Partnership (*Maatschaap*), regulated in Article 1618-1646 of the Civil Code.

The provisions regarding unincorporated business entities have changed in Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services (PP OSS), where the registration of CV, Firm (Fa), and Civil Partnership which was originally carried out at the Registrar of the District Court is changed to the Ministry of Law and Human Rights.

An incorporated business entity is an artificial legal subject (artificial or created by law or *rechtspersoon*) so that the business entity has rights and obligations like humans (*natuurlijk persoon*). The model of an incorporated business entity is more relevant to large-scale businesses and requires professional management. Indonesian laws regarding incorporated business entities are in the form of (1) limited liability companies (regulated under Law Number 40 of 2007 concerning Limited Liability Companies in conjunction with Law Number 11 of 2020 concerning Job Creation); (2) Foundations (Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations); and (3) Cooperatives (Law Number 25 of 1992 concerning Cooperatives).

The introduction of the concept of a private limited company in the Job Creation Act, which is an individual business entity that meets the criteria for Micro and Small Businesses as a limited liability company (which is a legal entity), makes small and medium businesses able to have legal entities as long as they apply for legalization of legal entities to the state. This renews the previously known concept of an unincorporated business entity, where even small businesses can have legal entities with all the consequences that arise.

- c) Aspects of Justice, Certainty, and Legal Benefits related to Private Limited Companies

The birth of the concept of a private limited company in the Job Creation Act can be viewed from the Theory of Basic Legal Values from Gustav Radbruch, which are the value of justice, expediency, and legal certainty. The value of justice according to Gustav Radbruch is seen as

65 Jones, *Introduction to Business Law*, 488–490.

66 Badan Pembinaan Hukum Nasional, *Naskah Akademik Rancangan Undang-Undang Badan Usaha*, 22.

67 Suryanti, *Ruang Lingkup Hukum Perusahaan*, 11.

68 Tri Jata Ayu Pramesti, “Badan Usaha Berbentuk UD Dan PT, Apa Bedanya?,” March 23, 2021, <https://www.hukumonline.com/klinik/a/badan-usaha-berbentuk-ud-dan-pt--apa-bedanya-cl3894>.

equality, to judge without regard to the person, to measure everyone by the same standard, and law is a means to achieve this justice.<sup>69</sup> Laws that do not have a purpose to achieve justice are invalid. If it is related to the context of a private limited company in the Job Creation Act, then we need to look at the background or spiritual nuances of the birth of the Job Creation Act in general, and then the birth of the concept of a private limited company in particular. The Job Creation Act in its elucidation states (General elucidation of the Job Creation Act):

*The purpose of the establishment of the State of the Republic of Indonesia is to create a prosperous, just, affluent, equitable society, both materially and spiritually. In line with this goal, Article 27 paragraph (2) of the 1945 Constitution states that every citizen has the right to work and a decent living for humanity, hence, the state needs to make various efforts or actions to fulfill the rights of citizens to obtain work and a decent living. Fulfillment of the right to work and a decent living is, in principle, one of the important aspects of national development which is carried out in the context of developing Indonesian people as a whole.*

The quote above needs to be underlined, especially about realizing a prosperous, just, affluent, and equitable society, and so on. The author believes, these things are the spirit that the government is trying to carry in making the Job Creation Act, which in this case is related to the value of justice as stated by Gustav Radbruch. This means that the Job Creation Act provides equal opportunities to all Indonesian people to get job opportunities and adequate economic access. In the context of private limited companies, the Minister of Law and Human Rights on the occasion of the launching of the Private Limited Company application in Bali, last October 8, 2021, said that the existence of a private limited company in Indonesia is expected to change the mindset of the Indonesian workforce to choose to become entrepreneurs and create job opportunities for themselves and others.

Furthermore, regarding the value of legal

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69 Gustav Radbruch, Bonnie Litschewski, and Stanley L. Paulson, "Five Minutes of Legal Philosophy," *Oxford Journal of Legal Studies* 26, no. 1 (2006): 14.

expediency, Radbruch emphasized that the value of legal justice must also be followed by the value of expediency or suitability for a purpose. The value of expediency, according to Radbruch, must aim to have a certain absolute value.<sup>70</sup> The elucidation of the Job Creation Act states that the Job Creation Act aims to create the widest possible work for the Indonesian people evenly throughout the territory of the Republic of Indonesia to fulfill the right to a decent living.<sup>71</sup> The author did not understand exactly what Radbruch means by "*certain absolute value*", but it can be assumed that the value of legal expediency in the Job Creation Act is generally contained in the sentence fulfilling the right to a decent living. The government wants to provide the maximum expediency to the lives of the Indonesian people through the Job Creation Act in general.<sup>72</sup>

Technically, the concept of a private limited company is seen as providing added value for people who want to use the private limited company as their business vehicle. The private limited company model is claimed to be able to compete with conventional limited liability company (association of capital company) in terms of running a business because it is managed professionally and is incorporated.<sup>73</sup> In addition, there are various facilities in the establishment of a private limited company that can provide benefits to society, such as<sup>74</sup> (1) the registration fee (Non-Tax State Revenue) for individual companies is relatively cheap, which is Rp. 50,000.00 (fifty thousand Rupiahs); (2) free to determine the amount of capital; (3) exempted from the obligation to be announced in the Supplement to the State Gazette as a form of bureaucratic simplification; (4) low tax rates as currently applicable for MSME actors. According to the author, these facilities apply the value of legal expediency as stated by Gustav Radbruch.

The next basic value of law is legal certainty, which is the basis for strengthening elements of justice and legal expediency. Legal certainty talks

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70 Ibid.

71 Indonesia, *Undang-Undang Tentang Cipta Kerja*, UU No. 11 Tahun 2020, LN No. 245 Tahun 2020 TLN No. 6537. *Bagian Penjelasan, I. Umum.*

72 Ibid.

73 *Keynote Speech Menteri Hukum Dan HAM Bertajuk Implementasi Kebijakan Pemerintah Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja: Launching Aplikasi Perseroan Perorangan.*

74 Ibid.

about how a material law is enforced (formal law). The value of legal certainty can answer the extent to which the expediency of law to a certain degree can provide justice (*this leads directly to the question of the degree to which expediency can give justice a discernibly recognizable content*).<sup>75</sup> The value of legal certainty in the context of a private limited company can be seen in the legal entity status of a private limited company, that is a separation of personal and company assets in the form of equity participation. This protects the founders of the company from legal liability that exceeds their capabilities. Furthermore, the existence of a legal entity status will facilitate access to capital for banks.<sup>76</sup>

The technique of establishing a private limited company is relatively easy, which is done by the applicant online through the [www.ahu.go.id](http://www.ahu.go.id) page so it no longer requires a notarial deed.<sup>77</sup> If the application process has been passed procedurally, the Minister of Law and Human Rights issues a deed of establishment of the private limited company electronically which can be downloaded and printed by the applicant. The company administration process in the Job Creation Act changes the ratification regime to a registration regime, including for private limited companies. The legal entity status of a private limited is obtained after registering a deed of establishment electronically and obtaining a registration certificate.<sup>78</sup> The description above shows the application of the value of legal certainty in the legal construction of a private limited company.

#### Analysis of the Development of Company Regulations in Indonesian Law

The description of the development of company regulations is limited to the following regulatory scopes: (1) definition; (2) establishment

procedure; (3) company organ; (4) company liability; and (5) the dissolution of the company. The author views that these 5 (five) things can represent a comprehension towards the basic concepts of the company adopted in Indonesian law.

The company's legal arrangements can at least be traced in the Commercial Code (KUHD), Law Number 1 of 1995 concerning Limited Liability Companies (LLC Law of 1995), and Law Number 40 of 2007 concerning Limited Liability Companies (LLC Law of 2007) and related laws and regulations. Furthermore, the company's regulations after the enactment of the Job Creation Act are traced in the Job Creation Act and its derivative regulations (Government Regulations and related Minister of Law and Human Rights Regulations).

*First*, regarding a company's definition, the Commercial Code's regulations are relatively simpler than those in the LLC Law of 1995 and LLC Law of 2007. The LLC Law of 1995 emphasizes that a company is a legal entity. Furthermore, the definition of a company in the LLC Law of 2007 contains the term "association of capital". The Association of capital prioritizes the accumulation of capital and does not emphasize the background of the founders or shareholders. In the Job Creation Act, the definition of a company is expanded, adding the form of an individual business entity or private limited company that meets the criteria for Micro-Small Enterprises (UM-K), with the establishment of a company being made possible by 1 (one) person.

*Second*, related to the procedure for establishing a company, the Commercial Code regulates that the establishment of a company must be with an authentic deed made before a notary (absolute requirement) and submitted to the Minister of Justice for approval. A new company can be considered as a legal entity when it has obtained approval from the Ministry of Justice, registered in the relevant district court, and announced in the State Gazette of the Republic of Indonesia, but this provision has not been effective since October 26, 1972. Thus, a company can carry out its activities after obtaining legal entity status from the Ministry of Justice.

The Limited Liability Company Law of 1995 stipulates that the establishment of a company must be with at least 2 (two) persons who are

75 Robert Alexy, *Gustav Radbruch's Concept of Law*, 2021, 9, <https://www.upjs.sk/public/media/16913/Gustav%20Radbruch's%20Concept%20of%20Law.pdf>.

76 *Keynote Speech Menteri Hukum Dan HAM Bertajuk Implementasi Kebijakan Pemerintah Dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja: Launching Aplikasi Perseroan Perorangan*.

77 *Permenkumham No. 21 Tahun 2021 BN No.470 Tahun 2021*, arts. 13–14.

78 *Ibid*.

bound by an agreement outlined in an authentic deed (notarial deed). A company is declared as a legal entity when the authentic deed of establishment is approved by the Minister of Justice. The regulation on the procedure for establishing a company in the Limited Liability Company Law of 2007 is not much different from that in the Limited Liability Company Law of 1995. However, the Limited Liability Company Law of 2007 introduced the technical establishment of a company through information technology facilities, in this case, the Legal Entity Administration System (SABH).

In the latest development, before the Job Creation Act came into effect, the company establishment process was no longer preceded by the submission of the company name as regulated in Article 9 paragraph (2) of the Limited Liability Company Law of 2007, but the process was combined with an application for company approval based on the Regulation of the Minister of Law and Human Rights Number 14 of 2020 concerning the Second Amendment to the Regulation of the Minister of Law and Human Rights Number 4 of 2014 concerning Procedures for Filing Applications for Legal Entities and Approval of Amendments to the Articles of Association and Submission of Notification of Amendments to the Articles of Association and Changes in Limited Company Data. Regarding the establishment of a company in the Job Creation Act, especially for private limited companies, the establishment of a company can be carried out by one founder. The establishment is done online by filling in the establishment statement form through SABH.<sup>79</sup> Then, the Minister of Law and Human Rights will issue a Deed of Establishment online, which the applicant can print independently.<sup>80</sup> Furthermore, the establishment of an association of a capital company is carried out through a notary online through the SABH, which in principle is the same as the method of establishment based on the Limited Liability Company Law of 2007. However, it is further regulated regarding supporting documents for the association of capital companies and the regime, which then changes the regime of legalization of company legal entities to the registration of company legal

entities.<sup>81</sup>

*Third*, company organs in the Commercial Code consist of management or directors, shareholders, and the board of commissioners as supervisors. However, the Commercial Code determines that the existence of a board of commissioners is not required.<sup>82</sup> According to the Company Law of 1995, the company organs are the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. This provision is the same as that regulated in the LLC Law of 2007 and the Job Creation Act. The provisions on company organs in the Job Creation Act allow the GMS and the Board of Directors to be held by shareholders in the context of a private limited company.

*Fourth*, the concept of separation of responsibilities of the company consists of the separation of responsibilities between the company, shareholders, directors (management), and the board of commissioners. Since the enactment of the Commercial Code, the concept of separation of responsibilities has been implemented. Shareholders (GMS) are responsible for the amount of capital owned; Directors and commissioners have limited liability as long as they carry out their duties under the authority specified in the articles of association or the deed of the establishment (in the context of a private limited company as regulated in the Job Creation Act). Since the implementation of the Limited Liability Company Law of 1995, the principle of *piercing the corporate veil* has been introduced in certain matters regulated by law, in the sense that shareholders can be held responsible for the company's mistakes as long as they meet the requirements stipulated in the Limited Liability Company Law of 2007. Regarding the separation of responsibilities between the company and the directors or shareholders, the Job Creation Act does not regulate further, which means that the concept of company responsibility is subject to the provisions of the Limited Liability Company Law of 2007.<sup>83</sup>

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81 Ibid., art. 6 dan 7.

82 R. Subekti and R. Tjitrosudibio, *Kitab Undang-Undang Hukum Dagang [Wetboek van Koophandel]*, Diterjemahkan Oleh R. Subekti Dan R. Tjitrosudibio, 32nd ed. (Jakarta: Pradnya Paramita, 2008), art. 44 ayat (1).

83 Raymon Sitorus, "Eksistensi Perseroan UMK Dan Implikasi Hukumnya Terhadap Kepailitan Menurut Sistem Hukum Indonesia," *Majalah Hukum Nasional* 5, no. 1 (2021): 30.

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79 Ibid., art. 13.

80 Ibid., art. 14 ayat (1) dan (2).

*Fifth*, according to the Commercial Code, the dissolution of the company is carried out if the company suffers a loss of 75%. As a result, the management is responsible for all legal actions against third parties unless there are provisions in the company's deed of establishment which regulates the reserve cash that can be used to cover the company's losses. The dissolution of the company referring to the Commercial Code is carried out by the management or directors. According to the Limited Liability Company Law of 1995, the dissolution of a company is carried out in terms of (1) the decision of the GMS; (2) the end of the period of establishment of the company as stipulated in the Articles of Association; and (3) the court order. This provision is maintained and expanded in the Limited Liability Company Law of 2007, by adding the following conditions: (1) the bankruptcy being revoked based on a commercial court decision that has permanent legal force and the company's bankrupt assets are not sufficient to pay the bankruptcy fees; (2) the state of insolvency as regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations; and (3) the revocation of the company's business license which requires the company to be liquidated. The provisions for the dissolution of the company in the Job Creation Act are the same as the provisions for the dissolution of the company as regulated in Article 142 paragraph (1) of the Limited Liability Company Law of 2007.

## CONCLUSION

Based on the results of the analysis, the author found that the basic concept of the company is an association of capital regardless of the background or shareholders (whether it has to be two or more people). The Company is recognized as a legal entity after being authorized by the state. As long as there is a separation of assets and it is authorized by the state, a company is recognized as a legal entity, regardless of the number of founders. Theories that support this statement are the Purpose Theory (*Doel Vermogens Theorie*) and the Theory of Eric W. Orts regarding corporate legal personality, which emphasize the importance of state authorization to determine the legal entity status of a company, as well as quoting the opinion of Prof. Agus Sardjono that the company is an association of capital and not an association of

persons.<sup>84</sup> The practice of company law in other countries also strengthens the argument that a company can be established only by one person.

The company's regulations develop from time to time following the needs and development of society's civilization. Especially with the development of the information technology sector, the provisions regarding the company are also adapting, for example, related to the procedures for the establishment, ratification, and registration of the company and the company announcements, which are currently carried out online and have been perfected since their first entry into force (after the enactment of the LLC Law of 2007). Conceptual developments also occur, especially after the enactment of the Job Creation Act, where a company can be established by 1 (one) person by filling out a deed of the establishment without using a notarial deed. The author can conclude that the law must be adaptive in responding to the needs and developments of society. This is evidenced by the development of regulations regarding companies in the Commercial Code, the LLC Law of 1995, the LLC Law of 2007, the Job Creation Act and its derivative regulations (Government Regulation No. 8/2021 and Permenkumham No. 21/2021) which show that the development of civilization and society takes place rapidly and must be responded by an established legal framework, especially when it comes to social welfare.

## SUGGESTION

Based on the conclusion of this paper, the author suggests the following things: *first*, conceptually there are no problems related to the concept of a private-limited company, which is why the author suggests that it is necessary to consider replicating legal concepts that already exist in other countries to respond to the development of society. This is can be done by ensuring that the replication is in accordance with the legal needs of the Indonesian people by first conducting relevant research or discourse and is open to the public. *Second*, in accordance with the development of company regulations in the Job Creation Act, it is necessary to analyze and evaluate

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84 Fahrurrozi, "Mendukung Kemudahan Berusaha Bagi Usaha Mikro, Kecil, Dan Menengah Berbadan Hukum Dengan Gagasan Pendirian Perseroan Terbatas Oleh Pemegang Saham Tunggal," 459.

the legislation as the legislation monitoring instrument based on the mandate of Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. This becomes important as a tools for controlling the effectiveness of the applicable laws and regulations.

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