



UDC 332

## LEGAL ANALYSIS OF INDIVIDUAL COMPANIES IN INDONESIA

**Sekarasih Setijati\***, Budiono Abdul Rachmad, Sukarmi, Santoso Budi

Faculty of Law, University of Brawijaya, Malang, Indonesia

\*E-mail: [setijati@student.ub.ac.id](mailto:setijati@student.ub.ac.id)

### ABSTRACT

In an attempt to boost the economy overall and micro and small companies in particular, the government passed the Job Creation Law in response to the current crisis brought on by the Covid-19 outbreak. A new legal entity, an individual company, is recognized by virtue of the Job Creation Law, which broadens the definition of a limited liability corporation. Many inconsistencies in the fundamental idea of a limited liability company were introduced by the presence of an individual corporation. This normative juridical study will cover legal shortcomings and suggested reforms, as well as the regulation of micro and small business standards based on the limited liability company and job creation laws. The purpose of this study is to identify the agreements pertaining to certain businesses. The study's findings show that there are still legal gaps in the foundations of individual businesses, meaning that government intervention is crucial to tightening regulations.

### KEY WORDS

Individual limited liability company, micro and small enterprises (MSEs), job creation law.

The Covid-19 pandemic has had a significant impact on the decline in economic development in Indonesia, even in global conditions (Hanoatubun, 2020). The existence of Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law) is considered to be able to support and assist in economic growth. The Job Creation Law aims to be a positive stimulus for growth and improvement of the national economy by mobilizing all sectors to encourage economic growth to reach 5.7% - 6% through creating as many quality jobs as possible, increasing investment, increasing consumption, increasing productivity and increasing wages so that can tie purchasing power and consumption (Susanto, 2020). As time goes by, there are several norms that are assessed and deemed no longer appropriate to the current situation and conditions and are detrimental to the interests of many people, so there is an urgency to trim and simplify the law (Matompo, 2020). The presence of the Job Creation Law simplifies dozens of regulations into one specific law, so that it can be a shortcut to harmonizing policies and streamlining regulations in Indonesia (Ramadani, 2021).

In connection with the Job Creation Law, the government hopes that business actors will no longer experience obstacles in building their businesses. Previously, business actors had to deal with overlapping laws and regulations related to licensing implementation. World banks and the International Finance Corporation (IFC) position Indonesia at 166th in the world in terms of ease of doing business, considering the process is so strict and long. When compared with the five OECD averages, processing the establishment of a business entity in Indonesia takes approximately 47 days to complete on average. Therefore, in order to support ease of doing business, especially Micro and Small Enterprises (UMK), the government has formed a new legal entity in the form of an Individual Company with limited liability.

Bearing in mind, MSEs are the largest group of economic actors in the Indonesian economy and have proven to be a safety valve in the Indonesian economy, as well as being a dynamist of economic growth after the economic crisis (Sulfati, 2018). MSEs play an important role in economic growth because they are the backbone of the country's economy, this is supported by their number reaching 99.99% of the total business actors and their contribution to Gross Domestic Product (GDP) reaching up to 61.07% and the absorption of the Indonesian workforce up to 97 % (Abbas, 2018). MSEs also have better resistance to



crises because their workforce and organizational structure are more flexible to adapt to current conditions. So it is believed that the existence of an Individual Company can help MSEs and provide a way out for people with limited capital. The government also believes that Individual Companies can provide new breakthroughs and legal protection for MSEs and cooperatives with the convenience, protection and empowerment they provide.

Overall, the government is optimistic that this concept will provide benefits and advantages for MSEs, because it is seen that there are concessions provided such as separation of assets from companies, ease of access to banking and ease of carrying out engagements with third parties. Ease of the registration process with the output in the form of an Individual Company certificate will provide significant benefits for business actors. However, how ready are the legal instruments in Indonesia to overcome deficiencies and maintain their sustainability in the future? In fact, the chance of a conflict of interest occurring in a Limited Liability Company founded by 2 (two) people is very high. So it does not rule out the possibility that a Limited Liability Company founded by 1 (one) person will experience something relevant considering that the shareholders also serve as members of the board of directors. So whether the convenience provided could be a trigger for conflicts to arise in the future.

Previously the author had outlined the background of the problem, so from the description of the problem the author was interested in conducting a deeper study of Individual Companies in terms of the relevant Law. The urgency of this article is because Individual Companies were founded by MSE business actors which are also a way out in supporting national economic growth. This research aims to determine individual companies from a legal perspective in relation to relevant laws and to determine the legal certainty of individual companies due to the unconstitutional Job Creation Law. Thus, several main issues that will be raised in this discussion can be detailed, namely as follows (1) How is the Juridical Analysis of Individual Companies Viewed from the Job Creation Law and the Limited Liability Company Law? and (2) What is the legal certainty of individual companies as a result of the unconstitutional Job Creation Law?

## **METHODS OF RESEARCH**

This research article applies a type of research in the form of normative juridical legal research (doctrinal research). Normative juridical legal research (doctrinal research) is carried out by studying and examining a problem topic with secondary data to find the answer. Secondary data is data obtained indirectly from library materials or literature that is related to the research object. Secondary data obtained from library materials includes primary, secondary and tertiary legal entities to analyze legal issues in this paper. Normative juridical legal research (doctrinal research) involves research on legal principles, legal systematics, levels of legal synchronization, legal comparison and legal history. Data collection for problem solving was carried out using library research, which was then analyzed qualitatively. Qualitative analysis, namely the analysis of data originating from legal materials, relies on statutory regulations, doctrine, legal principles, expert opinions, concepts, theories and the researcher's own views. Finally, compile the collected materials into legal data that can answer the problems described previously. This research uses a statute approach and a comparative approach. This research analysis method was carried out so that the author could reach a correct conclusion.

## **RESULTS AND DISCUSSION**

### **Individual Companies Reviewed of Indonesia**

The Job Creation Law was officially promulgated on November 2 2020. The presence of the Job Creation Law has withdrawn two regulations and revised various statutory provisions in various sectors which have revised at least 80 other laws. One of the laws affected is the Law on Limited Liability Companies, which regulates business norms and practices in Indonesia (Arief, 2021). Article 109 in the Job Creation Law regulates a number



of articles that amend several provisions in the PT Law. The provisions for changes related to Limited Liability Companies in the Job Creation Law were then reaffirmed in the Government Regulation concerning the Authorized Capital of Companies and Registration of the Establishment, Changes and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses.

The United States of America and Canada, two nations having Anglo-Saxon systems, referred to the Omnibus Law at first as the "Omnibus Bill." Anglo-Saxon nations follow the theory of judge made law, which holds that a court's decision creates new legislation. Robert Kaiser further explains that Anglo-Saxon or Common Law nations are always founded on standards derived from judicial rulings. The legal doctrine of *stare decises et queta non movere*, or the binding power of precedent, is upheld by courts in nations with Common Law or Anglo-Saxon legal systems. This indicates that the subsequent judge in a case must follow the prior judge's ruling in a comparable case. The issue is that, if the same judge rules on two cases that are nearly identical but differ in other respects, it will undoubtedly depart from the trial's central tenet—*stare decises et queta non movere*, or the binding power of precedent. This is an error in law that will lead to three unfavorable outcomes: the community will be treated unfairly; the concept of *stare decises et queta non movere*—the binding power of precedent—will be violated; and there will be a conflict of norms. competing norms in the Anglo-Saxon legal system are referred to as legal problems, according to Scarlet Paqino. Each competing standard has legal ramifications and contradicts the other when applied.

An Omnibus Bill, which serves as a type of consolidation of norms, both norms generated from courts and norms born from laws and regulations, was developed in order to resolve the conflict of norms brought about by competing court rulings. In this instance, the Omnibus Bill was not intended to serve as a behavioral guideline; rather, it was intended to serve as a consolidation of conflicting norms, such as those between court decisions and other court decisions (life norms), between court decisions and statutory norms, and between conflicting laws. Jim Rossi characterizes the Omnibus Bill's creation as a consolidative statute. Consolidation refers to giving judges guidance in deciding cases so that they do not conflict with other decisions that have become a living norm or so that they do not conflict with statutory regulations, particularly applicable laws and regulations. As a result, it is critical to recognize that the regulated norm in the Omnibus Bill cannot be directly applied to the community. Dependent norms are referred to in the Omnibus Bill system of Common Law or Anglo Saxon. That is, norms whose validity is dependent on the validity of other norms (such as court decisions or other legislation). The Omnibus Bill is also called a dependent norm because it can only bind other norms but does not have the binding power to regulate people's behavior so it can be understood why the Omnibus Bill is called an umbrella law, because its nature is not an applied norm.

Although the legal system of Continental Europe is recognized by the proverb "legislation is law and law is legislation," which states that statutory regulations are the only sources of truth. The persuasive force of precedent is the guiding principle of the judiciary in the legal systems of Continental Europe. This implies that a judge's ruling in a prior case may serve as a guide for judges making decisions in the future, but it is not required of them to do so. When deciding a case, judges in nations with a legal system derived from Continental Europe primarily refer to the norm as established by laws and regulations. The terms "conflict of norms" are used differently in the Anglo-Saxon and Continental European legal systems. For example, in the Anglo-Saxon legal system, "conflict of norms" refers to both conflicts involving legal norms and conflicts between decisions. Conversely, a conflict of norms in the legal system of Continental Europe refers to a disagreement not only between the content of a single piece of legislation but also between laws and regulations. Legislation built on the Omnibus Law model replaces codification rules and implementing rules (*lex specialis*) that contradict and lead to inconsistencies. This can be seen as a way to rearrange the norms that were previously governed by codification-based legislation.

As a nation with a Continental European legal system, Indonesia employs a tiered legal system, also known as the "stufenbau theory" (tiered ladder theory), which was put forth by Hans Nawiasky. Law Number 15 of 2019 concerning Amendments to Law Number 12 of



2011 concerning the Establishment of Legislations regulates the level or hierarchy of laws in Indonesia; however, the notion of an Omnibus Law is not based in this regulation. As a state legal system that upholds Civil Law, which places a higher priority on codification for legal validity, the idea of Omnibus Law has never been directly applied in Indonesia. This idea is typically used by nations with Common Law or Anglo-Saxon legal systems, which emphasize precedent as a source of law rather than codification and do not use laws and regulations as their primary standard of reference when judges make decisions (Nyoman, 2005). In the meantime, laws and regulations are paramount in Indonesia, where judges' decisions about cases must be grounded in statutory regulations.

Eka Noer Kristiyanto claims that the Omnibus Law, which was formulated through the historical and philosophical choice to use a comprehensive legal approach, demonstrates that the nation's policy makers do not wish to be controlled by a plethora of regulations (Eka Noer, 2020). Since the Omnibus Law concept is appropriate to address regulatory issues like disharmony, overlapping, inappropriate content, and sectoral egos from the forming institutions, its use is not prohibited in Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislations.

Agil Oktaryal contends that the Omnibus Law has drawbacks as well. To start, the law disregarded the formal requirements of the law's creation. His rapid-fire style makes people fear that he will pass laws before they reach several key stages, including drafting, discussing, ratifying, and enacting legislation. This breach goes against the rule of law principle, which states that all decisions made by the government must be supported by the law. Second, the Omnibus Law restricts transparency and public involvement in the legislative process. According to the agency, the DPR or the government controlled the Omnibus Law in practice in a number of countries, both in terms of its content and when it was created. Law is typically finished as soon as possible, sometimes in just one decision. Consequently, the area available for public involvement shrinks or even vanishes. On the other hand, transparency and public involvement are given top priority in a democracy. Third, if the Omnibus Law is not implemented, it may increase the regulatory burden (Agil Oktoral, 2021). It is feared that the discussion of the law will be incomplete due to its nature, which combines multiple aspects into a single law. Furthermore, whether a norm is general or specific like regular laws, the application of the Omnibus Law concept will still influence its form; if a norm is special, only contradictory provisions will be repealed. However, if this provision is general, it will be a problem if it is formed on the principle of *lex specialis derogat legi generalis* (specific rules override general provisions).

As a result, given its position in the hierarchy of laws and regulations, its existence must be regulated. In their journal article The Concept of Omnibus Law Related to Normal Law Applicable in Indonesia, Ariyanto and Jonci Muhammad also explain this. They state that it is important to determine whether the legal norms in the law with the concept of Omnibus Law are general or special like ordinary law, and that only contradictory provisions are repealed rather than all of the law's provisions. If the provision is general, though, it will be problematic if it goes against the *lex specialist derogat legi generalis* principle (special rules that override general rules). In order to ensure that the concept of the Omnibus Law is intended as a law made to target various objects into one big problem that may revoke or change several laws, it must be regulated in a hierarchy of laws and regulations regarding its position. As a result, the Omnibus Law concept law that was created represents a new paradigm in Indonesian laws and regulations. The law containing the concept of the Omnibus Law will alter the legal system due to the new paradigm in Indonesian legislation, as the theories and concepts differ from the applicable legal models and norms (Arianto, 2020).

### **Legal Certainty for Individual Companies Due to the Unconstitutional Job Creation Law**

In 2021, to be precise on November 25 2021, the Constitutional Court (MK) granted some requests for formal review and declared the Job Creation Law conditionally unconstitutional through Constitutional Court Decision No. 91/PUU-XVIII of 2020. Of the 9 MK judges, 5 judges granted the request for judicial review , while 4 judges expressed





different opinions. The Job Creation Law was declared conditionally unconstitutional because its formation was contrary to the Constitution and the Constitutional Court also ordered the legislators to make improvements within a maximum period of 2 (two) years after the decision was pronounced. The Constitutional Court judge considered that the Job Creation Law was not clear regarding its method, whether it was a revision or created a new law. The Constitutional Court judge also considered that the establishment of the Job Creation Law was not transparent to the public.

Based on the Constitutional Court's decision, the Job Creation Law does not have conditionally binding legal force as long as improvements are not made within 2 (two) years of this decision being pronounced. This decision also states that all actions/policies that are strategic and have a broad impact are suspended, and that it is not justified to issue new implementing regulations related to the Job Creation Law. Therefore, the Job Creation Law will remain in effect until improvements are formed within the specified period, as well as the formation of the MSME criteria contained in it. However, if within 2 (two) years, the legislators are unable to complete the revision of the Job Creation Law, then the Job Creation Law will be declared permanently unconstitutional and the MSME Law will be declared valid again.

This decision attracted public attention because on the one hand, in ruling number 4, the Constitutional Court stated that the Job Creation Law was still in effect, but in ruling number 7 ordered the suspension of actions and policies that were strategic in nature and had a broad impact. In general, the Job Creation Law is still in effect, but if it is strategic in nature and has a broad impact, then the implementation of the Job Creation Law must be suspended. However, restrictions on which matters are strategic and have a broad impact are not explained clearly and firmly, giving rise to confusion. Considering that the Job Creation Law simplifies dozens of regulations in various sectors, of course the effects will have a wide impact. This gives rise to the understanding that the entire implementation of the Job Creation Law must be suspended because it is strategic and has a broad impact.

On the one hand, the Job Creation Law is suspended, on the other hand, the old regulations do not apply because the Job Creation Law still exists, from this it can be concluded that there is a legal vacuum until the Job Creation Law is successfully revised. If the Job Creation Law is not suspended and is still implemented, this will be contrary to the Constitutional Court's decision and is an unlawful act. However, if the Job Creation Law is successfully revised, all sectors in various fields will experience significant expansion and development. The economy and business climate will develop rapidly because the convenience provided, especially for MSEs, will really help business actors who were previously hampered by several aspects. The main objective of the Job Creation Law itself, prioritizing MSEs, will be realized so that this has a positive impact on micro and small business actors (Aprilia, 2020).

It is possible that if the Job Creation Law is not successfully revised within a period of 2 (two) years, giving a period of 2 (two) years is considered short because the Job Creation Law itself includes dozens of regulations. So that individual companies that have been established require legal protection. When viewed from the theory of legal protection according to Philipus M. Hadjon, it is explained that legal protection for the people is a preventive and repressive government action. While the Job Creation Law is being revised, individual companies that have been established can carry out legal protection in the form of preventive measures, namely filing objections before a government decision takes definitive form. Objections submitted can be in the form of petitions or demonstrations with the correct procedures. If preventive measures have been carried out and do not obtain the expected results while the Job Creation Law has been revised and re-enacted, individual companies can take repressive legal measures by filing an objection to the decision (MK Gloria, 2021).

## CONCLUSION

Drawing from the aforementioned analysis and the previously described problem formulation, the author is able to arrive at the following conclusion: First, the creation of a new legal entity—the Individual Company—followed the passage of the Job Creation Law. Its



primary requirements are as follows: definition, establishment, capital, directors, modifications, and dissolution. Even after examining specific businesses, there may still be legal snags that prevent the main goal from being accomplished. Second, in accordance with decision no. 91/PUU-XVIII/2020, the Job Creation Law was deemed unconstitutional and was given a two-year period to be revised. During this time, all strategically important actions and policies were required to be put on hold. The Job Creation Law's suspension left a legal void that caused uncertainty for specific businesses. Once established, individual companies are able to take both repressive and preventive legal action.

Based on the results of the analysis and descriptions related to the Omnibus Law concept in the Job Creation Law and the legal consequences for Limited Liability Companies, concluded several things as follows: first, The Omnibus Law concept is a consolidation of all norms related to major topics/themes which represent the goals to be achieved and includes all subthemes (clusters). The number of sectors containing laws that are grouped into clusters into one law is very vulnerable to causing inconsistencies, namely unclear rules (bias), and in the end, the laws and regulations cannot effectively guide people's behavior, have a negative impact on its implementation so that it cannot achieve legal certainty. Second, related to the legal consequences for Limited Liability Companies, the emergence of inconsistencies in the Employment Creation Law against the Company Law, there is a new concept regarding Micro and Small Enterprises (SMEs) Limited Liability Companies or individual limited companies that are vulnerable to piercing the corporate veil because there is only one shareholder. The absence of the role of a notary and an authentic deed for the establishment, amendment, and dissolution of the GMS of a Micro and Small Enterprises (SMEs) Limited Liability Company only through the making of a statement in Indonesian electronically will lead to a lack of legality of the Ltd The absence of a minimum capital requirement could lead to vulnerabilities in providing third party payment guarantees; moreover, setting limits for the establishment of the founders of the Micro and Small Enterprises (SMEs) company may only be once a year, creating the risk of branching creditors; and providing an opportunity to creating Limited Liability Companies to seek profits every year, based on a limited liability concept. Researcher suggest that with the decision of the Constitutional Court No. 91/PUU-XVIII of 2020, the Government must be very aware of the legislation through the Omnibus Law concept, namely the Job Creation Law which still has several vulnerable areas in the emergence of legal problems, one of which is in the regulation of Micro and Small Enterprises (SMEs) Limited Liability Company. There is a need for an in-depth study of the development of the Omnibus Law concept in other countries and the alignment of how the regulations are formed in Indonesia. Accuracy and prudence are also needed to carry out an Amendment, Revocation, or Enforcement of several provisions in each law, therefore their formulation must have democratic transparency.

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