

SOCIAL JUSTICE'S MANIFESTATION: THE RELATION BETWEEN LIMITED COMPANIES AND SMALL AND MEDIUM ENTERPRISES

I Gede Agus Kurniawan; Fakultas Hukum, Universitas Pendidikan Nasional, Jl. Bedugul No. 39, Sidakarya, Denpasar, Bali; *E-mail*: gedeaguskurniawan@undiknas.ac.id

Abstrak

Keadilan sosial merupakan pilar penting dalam identitas konstitusi Indonesia. Dalam hal ini, setiap Undang-Undang yang berkaitan dengan perekonomian Indonesia diharuskan untuk mencerminkan substansi keadilan sosial. Salah satu aspek yang wajib memperhatikan aspek keadilan sosial adalah terkait pembentukan Perseroan Terbatas (PT). Penelitian ini bertujuan untuk mencari urgensi manifestasi keadilan sosial dalam pembentukan PT sebelum dan sesudah direvisi. Penelitian ini merupakan penelitian hukum normatif yang memiliki orientasi atas pengkajian norma dan aturan-aturan hukum. Penelitian ini didasarkan pada isu hukum yaitu aspek keadilan sosial dalam kebijakan hukum kemudahan Usaha Kecil dan Menengah (UKM) dalam mendirikan PT. Bahan hukum dalam penelitian ini meliputi, bahan hukum primer dan bahan hukum sekunder, serta bahan non-hukum. Pendekatan dalam penelitian ini yaitu pendekatan peraturan perundang-undangan dan pendekatan konseptual. Hasil penelitian menegaskan bahwa hakikat dari revisi ketentuan PT dalam UU Cipta Kerja yaitu membolehkan PT dibentuk oleh badan hukum usaha, mikro, dan kecil. Esensi keadilan sosial yang berupaya mensejahterakan segala lapisan masyarakat Indonesia. sejatinya telah terfasilitasi dengan adanya revisi ketentuan UU Cipta Kerja beserta peraturan turunannya sehingga PT tidak hanya didominasi oleh pihak pemodal, tetapi termasuk dapat memberdayakan UKM.

Kata Kunci: Keadilan Sosial, Perseroan Terbatas, UKM.

Abstract

Social justice is an important pillar of Indonesia's constitutional identity. In this case, every law relating to the Indonesian economy is required to reflect the substance of social justice. One aspect that must pay attention to aspects of social justice is related to the formation of a Limited Liability Company or Perseroan Terbatas (PT). This research aims to find the urgency of the manifestation of social justice in the formation of PT before and after revision. This research is normative legal research which has an orientation towards the study of legal norms and rules. This research is based on legal issues, namely the social justice aspect in the legal policy of facilitating Small and Medium Enterprises (SMEs) in establishing PT. The legal materials in this research include primary legal materials and secondary legal materials, as well as non-legal materials. The approaches in this research are the statutory regulatory approach and the conceptual approach. The research results confirm that the essence of the revised PT provisions in the Job Creation Law is to allow PTs to be formed by business, micro, and small business legal entities. The essence of social justice seeks to improve the welfare of all levels of Indonesian society. In fact, this has been facilitated by the revision of the provisions of the Job Creation Law and its derivative regulations so that PTs are not only dominated by investors but can also empower SMEs.

Keywords: Social Justice, Limited Company, SMEs.

INTRODUCTION

Law as a means of community renewal is interpreted as an instrument of coercive orders.¹ The law, in this case, must be interpreted as a norm that radiates social values in society.² The general public identifies the law as a "command" or a top-down command. The character only interprets the law narrowly, which is only synonymous with "power" as a keyword. The law is more than just an order. As part of the social-societal subsystem, the law should have a progressive and prospective character.³ This character not only emphasizes the law as an "instruction" but also as an "innovation" that continues to develop to meet the demands of society.⁴ The existence of developments in community needs must be a "response" to the law.⁵ Law is indeed identical to a set of written rules which, if interpreted narrowly, will present a "static" nature. Thus, even though the law is identical to the written rule, the written rule must be open to correction, replacement, and legal interpretation. That is so that legal values can develop following society's demands, manifested in written law.⁶ The legal developments is the effort to use parties with a weak position, such as small entrepreneurs. Small entrepreneurs in Indonesia or the context of law and policy are called *Usaha Kecil dan Menengah* or **Small and Medium Enterprises** (hereinafter referred to as SMEs).

MSMEs are a form of "community" level business that does not emphasize capital as a "main aspect". In this case, capital is not unimportant but is not the main aspect of the formation of SMEs. The main thing about SMEs is that some special facilities and policies can empower SMEs, and this can only be done by the state in case of the government through various legal products and policies. One of the legal products oriented toward empowering SMEs is Law no. 11 of 2020 concerning *Cipta Kerja* or Job Creation (hereinafter referred to as the Job Creation Law) and its derivative regulations.⁷ One of the derivative regulations of the Job Creation Law is PP. 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Amendment, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses (hereinafter referred to

¹ G.G. Bateman, "The Ought To Be a Law: Gustav Radbruch, Lon L. Fuller, and H.L.A. Hart on The Choice Between Natural Law and Legal Positivism," *The Journal Jurisprudence* 271, No. 1 (2019): 3–15, <https://doi.org/10.1093/ojls/gqi042>.

² Jesús Vega, "Legal Philosophy as Practical Philosophy," *Revus*, No. 34 (2018): 57–68, <https://doi.org/10.4000/revus.3859>.

³ Subiharta Subiharta, "Moralitas Hukum dalam Hukum Praksis Sebagai Suatu Keutamaan," *Jurnal Hukum dan Peradilan* 4, no. 3 (2015): 385, <https://doi.org/10.25216/jhp.4.3.2015.385-398>.

⁴ Anik Iftitah, "Pancasila versus Globalisasi: Antara Konfrontasi dan Harmonisasi?," in *Pancasila dalam Pusaran Globalisasi*, ed. Manunggal Kusuma Wardaya Al Khanif, Mirza Satria Buana (LKIS, 2017), 35.

⁵ Fradhana Putra Disantara, "Perspektif Keadilan Bermartabat dalam Paradoks Etika dan Hukum," *Jurnal Litigasi (e-Jurnal)* 22, No. 2 (2021): 205–29, <https://doi.org/http://dx.doi.org/10.23969/litigasi.v22i2.4211>.

⁶ Desi Apriani Nur Hidayat, "Hukum Pancasila dengan Metode Penalaran Ideologi Pancasila," *Negara Hukum* 12, No. 1 (2021): 146.

⁷ Hari Agus Santoso, "Efektifitas Undang-Undang Cipta Kerja Terhadap Peningkatan Investasi," *Jurnal Hukum Positum* 6, No. 2 (2021): 254–72.

as PP UKM) which provides special provisions for micro and small businesses to be able to establish a Limited Company or *Perseroan Terbatas* (hereinafter referred to as PT). That is certainly a "progressive" idea because it has changed the nature of PT as stated in Law No. 40 of 2007 concerning Limited Companies (hereinafter referred to as PT Act) in which PT must be identified with capital and shares so that only medium to upper-class businesses can create a PT. The Job Creation Law and its derivative regulations, namely PP UMK, actually aim to explore and implement social justice values in legal policies.⁸

The value of social justice is a constitutional identity as well as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as RI Constitution), and in particular, is a separate principle in the basis of the Indonesian state, namely Pancasila.⁹ The essence of the value of social justice is what the state wants to realize through the Job Creation Law and its derivative regulations, namely PP UMK. One of the studies on the role of the state in protecting MSMEs was carried out by Dian Cahyaningrum (2021) regarding the role of banks in legal protection for SMEs affected by Covid-19, which discussed banking policies on MSMEs, especially those directly affected by the Covid-19 pandemic.¹⁰ Furthermore, research was also carried out by Wuri Sumampouw, Kana Kurnia, and Imam Ridho Arrobi (2021) on Legal Protection for Micro, Small and Medium Enterprises after the Enforcement of Law Number 11 of 2020 concerning Job Creation which discusses the implementation of PP 7 of 2021 which provides access to for MSMEs such as legal assistance and legal consultation.¹¹ Lebih lanjut, penelitian selanjutnya dilakukan oleh Nabilah Apriani, Ridwan Wijayanto Furthermore, further research was carried out by Nabilah Apriani, and Ridwan Wijayanto Said (2022) on Legal Protection Efforts Against Micro, Small and Medium Enterprises (MSMEs) in Indonesia, which emphasized that the role of the state in MSMEs must be comprehensive while ensuring MSME products can compete and comply with consumer expectations.¹² Based on the three previous studies, this research is an original study because it discusses the Job Creation Act and its derivative regulations, namely PP UMK in the perspective of social justice which has not been discussed by the three previous studies.

⁸ Anggreany Arief and Rizki Ramadani, "Omnibus Law Cipta Kerja dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas," *Al-Adalah: Jurnal Hukum dan Politik Islam* 6, No. 2 (2021): 106–20, <https://doi.org/10.35673/ajmpi.v6i2.1550>.

⁹ I Gede Agus Kurniawan, "Valuasi Merek Sebagai Jaminan Kredit Perbankan: Relevansi Dalam Pembentukan Lembaga Penilai Kekayaan Intelektual," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, No. 4 (2020): 767, <https://doi.org/10.24843/JMHU.2020.v09.i04.p08>.

¹⁰ Dian Cahyaningrum, "Peran Bank dalam Pelindungan Hukum Terhadap Usaha Mikro, Kecil, dan Menengah Terdampak Covid-19," *Negara Hukum* 12, No. 1 (2021): 3.

¹¹ Imam Ridho Arrobi Wuri Sumampouw, Kana Kurnia, "Perlindungan Hukum Terhadap Usaha Mikro Kecil dan Menengah Pasca Pemberlakuan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja," *De Jure* 13, No. 1 (2021): 25.

¹² Ridwan Wijayanto Said Nabilah Apriani, "Upaya Perlindungan Hukum Terhadap Industri Usaha Mikro Kecil dan Menengah (UMKM) di Indonesia," *Al Azhar Indonesia* 2, No. 1 (2022): 29.

Legal Issues

Based on the above background, the formulation of the problem in this study as the things that will be answered in this study include: (i) What is the nature of the changes to the provisions of the Limited Company in the Job Creation Law and its derivative regulations? (ii) What is the urgency of the social justice aspect in the Job Creation Law and its derivative regulations regarding the ease of SMEs in establishing Limited Companies?

RESEARCH METHODS

This research is normative legal research with an orientation on studying legal norms and rules.¹³ The study is based on the "internal" system of legal science by basing on the principles, theories, concepts, and legal doctrines of the experts. This research is based on legal issues, namely the social justice aspect in the legal policy of facilitating SMEs in establishing Limited Companies.¹⁴ The legal materials in this study include primary legal materials, namely: RI Constitution, the Job Creation Law,¹⁵ the PT Act, and the PP UKM. Secondary legal materials include all scientific works (including research results) related to the legal issues discussed and non-legal materials, including legal dictionaries. The approach in this study is the approach to legislation and conceptual approach.

DISCUSSION

A. The Essence of Revision in Limited Company Provisions in the Job Creation Law and the Derivative Regulations

Law, like other social-social institutions, is always related and intertwined with non-legal aspects in the social and other social aspects.¹⁶ Law, in this case, cannot be seen as "autonomous" or "neutral" to human needs. Autonomy, in this case, is seen that the law "stands alone" without any specific connection in the aspect of human needs.¹⁷ That is something that is almost certainly "impossible" because the law is related to certain non-legal aspects. Regarding legal neutrality, there are some criticisms that legal neutrality is an illusion.¹⁸ Legal neutrality, in this case, is understood as the "internal capacity" of the law to respond to the community's needs. The "internal ability" of the law is not enough,

¹³ Irwansyah, *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel* (Yogyakarta: Mira Buana Media, 2020).

¹⁴ Hario Mahar Mitendra, "Fenomena dalam Kekosongan Hukum," *Jurnal Rechtsvinding Online*, 2018, 2.

¹⁵ Weppy Susetiyo and Anik Iftitah, "Peranan dan Tanggungjawab Pemerintah Dalam Pelayanan Kesehatan Pasca Berlakunya UU Cipta Kerja," *Jurnal Supremasi*, August 31, 2021, 92-106, <https://doi.org/10.35457/supremasi.v11i2.1648>.

¹⁶ Philip Selznick Philippe Nonet, *Law and Society in Transition* (London: Routledge, 2017).

¹⁷ Rr Rina Antasari, "Telaah Terhadap Perkembangan Tipe Tatanan Hukum di Indonesia Perspektif Pemikiran Nonet-Selznick Menuju Hukum Yang Berkeadilan," *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 19, No. 1 (1970): 103-18, <https://doi.org/10.19109/nurani.v19i1.3344>.

¹⁸ Derek T Muller, "The Electoral College and the Popular Vote," *Harvard Law and Policy Review* 7 (2020): 671.

but it must be in conjunction with the external aspects that make it create a law. The law, in its struggle with human interests, actually experiences a dichotomy between two views, namely the view that says the law is "*supreme*" and as commander in chief and the view that asserts that law is the "*product*" of human reality.¹⁹

This dichotomy has become a fierce debate among legal scholars. The view of the law as a commander and is "*supreme*" provides an affirmation that "the law is above everything". Everything that is against the law is considered illegitimate, and the state, with the power of its apparatus, can take certain steps. The view that the law is the commander in chief is, on the one hand, good because legal values should be used as a guide and guide in human life.²⁰ However, the negative impact of the law as a commander is when the law is "*manifested*" by a certain group (in this case, the ruler of the state) so that what the group says is considered law. That is what has reduced the law as a commander and degraded the dignity of the law only as a "*commander*" for its people. Another view of the law is when placing the law as a "*product*" of human reality. Law is only interpreted as a product, so that law can mean "*political product*", "*cultural product*", to "*product of economic interests*".²¹ The law, in this case, is "*stuck*" on the stigma as a means of legitimacy. In the context of law with economics or business, the law is often derogated as "*a product of economy and business*". That gives rise to the view that law only "*facilitates*" economic and business practice, and law cannot regulate economic and business processes.²² The view that the law is considered to have no capacity to regulate economic and business processes is based on the liberal legal creed, which asserts that "the law is only a gate closing," which means that the law only facilitates economic and business processes and allows economic and business processes as applicable within its scope.

The question is whether the "*style*" of liberal law is suitable and relevant to Indonesia?²³ Laws with a liberal character in the context of economics and business in Indonesia can be seen in enacting the PT Act.²⁴ Philosophically, the PT Act is based on Article 33 of the RI Constitution. However, paragraphs (4) and (5) of Article 33 of the RI Constitution also provide space for aspects of economic and business liberalization in Indonesia. That can be understood because historically, paragraphs (4) and (5) of Article 33 of the RI Constitution were the product of the amendments to the RI Constitution in the reform era, which was around 1999-2002. Although it must be seen that paragraphs (4)

¹⁹ I Gede Agus Kurniawan, "Putusan Mahkamah Konstitusi Terhadap Undang-Undang Cipta Kerja dalam Perspektif Filsafat Utilitarianisme," *Jurnal Usm Law Review* 5, No. 1 (2022): 282-98, <https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4941>.

²⁰ Slamet Suhartono, "Hukum Positif Problematik Penerapan dan Solusi Teoritiknya," *DiH: Jurnal Ilmu Hukum* 15, No. 2 (2019): 201-11, <https://doi.org/10.30996/dih.v15i2.2549>.

²¹ Jennis J Biser, "Locke Versus Hobbes: Political Economy of Property Rights," *Journal For Economic Educator* 20, no. 1 (2020): 1-27.

²² Budiono Kusumohamidjojo, *Teori Hukum: Dilema Antara Hukum dan Kekuasaan* (Bandung: Yrama Widya, 2016).

²³ Kusumohamidjojo.

²⁴ Aditya Yuli Sulistyawan, "Liberalisme dan Rasionalitas Sebagai Basis Rule of Law: Perspektif Gerald Turkel," *Undang: Jurnal Hukum* 3, No. 1 (2020): 188.

and (5) of Article 33 of the RI Constitution are also a form of effort to facilitate economic and business development, by reading the constitution systematically, the reading of Article 33 of the 1945 Constitution of the Republic of Indonesia should be read in "*one breath*" comprehensively and as a whole. One paragraph in Article 33 of the RI Constitution cannot be read separately from other paragraphs.

Reading holistically and comprehensively, Article 33 of the RI Constitution should also be an orientation in determining a law's philosophical, sociological, and juridical basis.²⁵ In legal science, the law is a derivative of the constitution, so the making of law must also be based on the constitution.²⁶ That is a "*covert*" effort to understand and interpreting the "*partialization*" of the provisions of the national economy in the RI Constitution. If paragraphs (1)-(3) of Article 33 of the RI Constitution are characterized by kinship, then paragraphs (4) and (5) of the RI Constitution have a liberal character. Of course, the national economy must seek "*proportionalization*" of the familial and liberal aspects. Being too obsessed with one aspect is also not good and tends to negate other aspects. That is what violates the mandate of the constitution. If we look at the philosophical basis of the PT Act, it is clear that there are efforts to emphasize the "*liberal*" aspect more than the family economy. Furthermore, in the sociological basis of the PT Act, it is emphasized that "*.....a law that regulates limited liability companies that can guarantee the implementation of a conducive business climate...*".

At first glance, it can be seen that the PT Act emphasizes a "*conducive business climate*," which means that the PT Act has a "*spirit*" of the liberalization of the national economic system. Even so, another sociological basis that the PT strives to be "*.....stimulates national development which is structured as a joint effort based on kinship*". That means that, systematically, the establishment of the PT Act is indeed oriented to further elevate the aspect of economic liberalization compared to the family economy. That is what makes the PT Act disproportionate philosophically and sociologically. The PT Act in a juridical review confirms that Law Number 1 of 1995 concerning Limited Companies is "*outdated*" and irrelevant to be used as a legal basis for the implementation of the national economy, especially in PT. If referring to the philosophical, sociological, and juridical foundations above, there are at least three implications in the PT Act regarding the orientation of the national economy. *First*, the PT Act in its philosophy tends to emphasize the aspect of economic liberalization above the family economy. That causes economic liberalization to be "*lex superior*" compared to the family economy. *Second*, the PT Act has carried out "*legislation cherry picking*," or the orientation of a law that only "*selects and sorts out*" constitutional provisions as a justification, not as a true philosophical basis.

²⁵ Muh. Afif Mahfud, "The Relevance of Ronald Dworkin 's Theory for Creating Agrarian Justice in Indonesia," *Yustisia* 8, No. 3 (2019): 385-99, <https://doi.org/10.20961/yustisia.v8i3.27386>.

²⁶ Muhammad Harun, "Philosophical Study of Hans Kelsen ' s Thoughts on Law and Satjipto Rahardjo ' s Ideas on Progressive Law," *Walisongo Law Review (Walrev)* 1, No. 2 (2019): 195-220, <https://doi.org/10.21580/Walrev/2019.1.2.4815>.

That can be seen when the philosophical foundation of the Limited Company Law only includes paragraphs (4) and (5) of the 1945 Constitution of the Republic of Indonesia, which emphasizes economic liberalization.²⁷ *Third*, the philosophical and sociological problems in the PT Act have implications for legal policies in the PT Act, which means that there are policies in the PT Act that are more "pro-liberal" compared to the family economy or *ekonomi kekeluargaan*. The implication of legal policy in the PT Act as problematic on the philosophical basis is the emphasis that PT is synonymous with capital as the basis of resources in establishing PT. Article 1 point 1 of the PT Act expressly states that a Limited Company is a capital partnership. This capital partnership is understood as an "association" of rich people or those who have productive assets as the capital for the establishment of PT.²⁸ The PT Act provisions confirm the economic liberalization, which sees PT as only a tool and means for those with it. That confirms that PT is only synonymous with capital, and by itself, it is only their territory that has productive assets. The PT Act itself also *conditio sine qua non* and identifies PT as an association of capital owners. That means that capital is an essential element in PT.²⁹

According to the author, this provision, as a result of the philosophical understanding of the Limited Company Law, only includes paragraphs (4) and (5) of Article 33 of the RI Constitution as the philosophical basis. Paragraphs (4) and (5) of Article 33 of the RI Constitution emphasize the aspect of "economic liberalization," which, if not anticipated optimally, can create conditions of economic and business chaos because only those who have it can control the economy and business in Indonesia. Economic liberalization in Indonesia also can give birth to a *bellum omnium contra omnes*, an economic and business situation in which only the owning parties compete for economic and business resources. In this context, the victims are the "weak" and have no possessions. Those who have middle and lower economic resources have the potential to become "victims" in the economic competition of the owners of capital. That can happen in the PT Act because it does not holistically include Article 33 of the RI Constitution. The identification that investors own PT gets the antithesis of the Job Creation Law. In Article 109 of the Job Creation Law, Article 1 point 1 has revised the PT Act provisions so that the alternative is that PT, apart from being a capital partnership, can also be established by individual, SMEs entities. The alternative provisions in the definition of PT in the Job Creation Law are proven by the word "or" so that the PT can be in the form of a capital partnership or individual legal entity that is business, micro, and small.

²⁷ Gridanya Mega Juwana, Stephanie, Gabriella Gianova Laidha, *Sistem dan Praktik Omnibus Law di Berbagai Negara dan Analisis RUU Cipta Kerja dari Perspektif Good Legislation Making* (Jakarta: Indonesia Ocean Justice Initiative, 2020).

²⁸ Aufi Qonitatus Syahida Radith Prawira Adriadi, Shandy Aditya Pratama, "Perubahan Pengaturan Pendirian Perseroan Terbatas dalam Undang-Undang Nomor 40 Tahun 2007 Pasca Diundangkannya Undang-Undang Nomor 11 Tahun 2020," *Indonesian Notary* 3, No. 2 (2021): 72.

²⁹ Lubna Tabassum, "The Importance of Negotiation and Conflict Management," *Journal of Management and Science* 10, No. 2 (2020): 15-19, <https://doi.org/10.26524/jms.2020.2.4>.

In the author's opinion, this provision has, in fact, fundamentally changed the PT Act, especially concerning three aspects. *First*, the provisions in the Job Creation Law that changed the definition of PT have been tacit reform on the philosophical basis of the PT Act. If in the consideration the PT Act emphasizes paragraphs (4) and (5) of Article 33 of the RI Constitution, the provisions in the Job Creation Law mandate the need for a constitutional reading of the national economy by reading in its entirety Article 33 of the RI Constitution. *Second*, a fundamental change in the spirit of PT Act must be interpreted that the editorial changes to PT Act by the Job Creation Law are not only "editorial and textual" changes or revision but include paradigmatic changes. The change in this matter means that the Job Creation Law has "straightened" the spirit that should be the guiding "spirit" in the Law on PT. *Third*, changes in the definition of PT in the Job Creation Law require a systematic understanding of the philosophy in the PT Act and changes in the PT Act in the Job Creation Law. In this case, the philosophy of the Limited Company Law can be understood by studying the changes to the PT Act in the Job Creation Law. The paradigmatic change in the PT Act carried out by the Job Creation Law is oriented towards efforts to place family values and principles in the national economy in proportion to the liberal economic concept.

The PT Act is also not *expressive verbis* in determining the principles that apply and develop in PT. This should be a concern that even though it is not explicitly stated, the kinship principle should be used as a guide in formulating the articles in the PT Act. Thus, the Job Creation Law seeks to restore the PT's essence, which should proportionally stand between the principle of kinship and economic liberalism. Based on the description above, the essence of the change in the provisions of the limited company in the Job Creation Law and its derivative regulations is to emphasize the principle of kinship in the national economy while at the same time providing opportunities for businesses, micro, and small companies to establish PT because the provisions of the PT in the Job Creation Law alternatively are allowed to established under the provisions of a capital partnership or by a business, micro, and small legal entity.

B. The Manifestations of Social Justice in the Job Creation Law and its Derivative Regulations: Relations with SMEs and Limited Companies

An understanding of social justice must begin with dismantling the meaning of justice itself. Etymologically, the word "justice", which in English as justice, is entrenched and rooted in *Latin*, namely *iustitia*.³⁰ The understanding of *iustitia* in *Latin* has a broad meaning and is not always synonymous with formal law.³¹ That means that justice in the *Latin* understanding must be understood substantively and not "trapped" and "hostage" by a narrow understanding of legal formalism. That means that justice is actually "beyond" the law, and even the purpose of enacting it is the realization of justice itself. The Black

³⁰ Harpani Matnuh, "Law as a Tool of Social Engineering," in *1st International Conference on Social Sciences Education "Multicultural"*, vol. 147, 2018, 118–20, <https://doi.org/10.2991/icsse-17.2018.28>.

³¹ Emima Alistar (Hirlav), "The Relation Between Law and Morality," *SSRN Electronic Journal*, 2019, <https://doi.org/10.2139/ssrn.3388103>.

Law Dictionary provides an understanding of the word justice with various variants of meaning, including:³² (i) justice means something fair, emphasizing proportionality and propriety. This understanding posits that legal justice must be understood as a rule of just law which is not only a law but a legal substance that exists and is applied, (ii) justice is understood as an act of carrying out and enforcing the law with the orientation of a balance of rights and obligations of existence. A certain problem (judicature function), (iii) justice is manifested in every public action that is expected to bring the common good to the community. From the understanding of the Black Law Dictionary, justice itself is tentative, which means it depends on which aspect of justice it is understood.

Philosophers such as Kant, Rawls, and Confucius have written and understood the ideas and theories of justice.³³ Not infrequently, religious teachings also mention the nature of justice in the aspect of human relations (*muamalah*).³⁴ In Indonesia, the idea of justice must be read based on the philosophical foundation of the Indonesian nation, namely Pancasila. Pancasila is the culmination point and the *modus vivendi* of the various essences of morality that developed from the earth of the Indonesian nation. Pancasila, which consists of five precepts, must be read in a hierarchical-pyramidal manner.³⁵ This means that the five values of the Pancasila are an inseparable part of the body. The understanding of justice in Pancasila must be seen in the fifth precept, which emphasizes social justice. The idea of social justice becomes interesting because the term justice in western philosophy is often written alone without any pair of words.³⁶ That is unique and interesting because Pancasila clearly expresses social justice. Historically, Pancasila must be seen in three moments: June 1, June 22, and August 18, 1945. On June 1, 1945, Sukarno's formulation of Pancasila put forward the value of "social welfare," while in the formulation of the Jakarta Charter and the "final" formulation of Pancasila in the Preamble to the constitution, the term "social justice" was clearly defined.³⁷ Of course, looking at the historical dimension in the Pancasila, social justice must be read as justice that strives for the realization of social welfare. This understanding, at the same time, obliges the articles of the constitution to have an orientation to seek the realization of social welfare. The

³² and Henry Campbell Black Garner, Bryan A., "Black's Law Dictionary," *Minnesota: West Publishing Co, St. Paul* 82, No. 8 (2019): 886, <https://doi.org/10.2307/3308065>.

³³ and Udin Safala Safira, Martha Eri, "Analisis Pendekatan Teori Keadilan John Rawls dan Teori Moralitas Immanuel Kant Terhadap Caleg Mantan Narapidana yang Lolos Sebagai Anggota Legislatif dalam Pemilu 2019," *Legal Standing* 3, No. 1 (2019): 131-46.

³⁴ Nahdhah, "Konsep Keadilan dalam Mediasi Pada Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (Lapspi)," *Al 'Adl* 13, No. 1 (2021): 51.

³⁵ I Gede Agus Kurniawan, "The Reconstruction of Subjectum Litis in Term of Reflections on Constitutional Dissolution of Political Parties," *Jurnal Akta* 9, No. 1 (2022): 104-19, <https://doi.org/http://dx.doi.org/10.30659/akta.v9i1.20970>.

³⁶ Doron Menashe, "A Critical Analysis of the Online Court," *University of Pennsylvania Journal of International Law* 39, no. 4 (2018): 921-53.

³⁷ and Ida Bagus Nyoman Wartha Brata, Ida Bagus, "Lahirnya Pancasila Sebagai Pemersatu Bangsa Indonesia," *Jurnal Santiaji Pendidikan* 7, No. 1 (2017): 120-32, <https://doi.org/https://doi.org/10.36733/jsp.v7i2>.

Pancasila formulation regarding social justice is also implemented in the formulation of the 1945 Constitution of the Republic of Indonesia.

Articles 33 and 34 of the RI Constitution contained in Chapter XIV of the RI Constitution affirm the term "controlled by the state".³⁸ If the meaning of "controlled by the state" is only interpreted laterally and textually, then "controlled by the state" can be oriented to the totalitarianism of the state, and even the state can become an "institution" above the individual. In the name of a country, anything can be done if "controlled by the state" is only partially interpreted. The understanding of "government-controlled" in Article 33 of the RI Constitution has a higher or broader meaning than property under the civil law concept. The concept of state control is a public law concept related to the principles of popular sovereignty enshrined in the RI Constitution in both the political (political democracy) and economic (business democracy) spheres. Suppose that the meaning of "government-controlled" is interpreted only as property in the civil (private) sense. In this case, this is not enough to use this control to achieve the goal of 'maximum prosperity of the people' and thus 'promote the common good' and 'social welfare for all Indonesians'. The mission is to achieve justice in the preamble to the RI Constitution has been omitted. The term "state sovereignty" should encompass the broadest sense of state rule. It derives from the concept of the sovereignty of the Indonesian people over land, water, nature and all sources of wealth that generate the resources contained therein; including the idea of public ownership of communities of people in the dawn of wealth.

In the context of state control, the people collectively instruct the state to carry out policies (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*) and supervision (*toezichthoudensdaad*) for the greatest prosperity of the people. In this context, "controlled by the state" must be read as "managed by the state" so that the goal of people's welfare in the social justice dimension must be the main orientation.³⁹ In the context of the PT Act, the dimension of "controlled by the state" as an orientation of "managed by the state" has been castrated in the considerations. The philosophical foundation of the PT Act only partially confirms the formulation in paragraphs (4) and (5) of Article 33 of the the RI Constitution. That certainly impacts the identification of PT as a "tool" for investors. PT, with a philosophical foundation that only includes paragraphs (4) and (5) of Article 33 of the the RI Constitution as a philosophical foundation, has distorted the understanding of social welfare. Social welfare in the legal context must be understood that there are legal instruments that support the realization of social justice. The PT Act provisions have reduced social justice's meaning to "liberal

³⁸ and Ibnu Sina Chandranegara Farhani, Athari, "Penguasaan Negara Terhadap Pemanfaatan Sumber Daya Alam Ruang Angkasa Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Konstitusi* 16, No. 2 (2019): 235, <https://doi.org/10.31078/jk1622>.

³⁹ Arasy Pradana A Azis and Yance Arizona, "Afiriasi MK Terhadap Jukstaposisi Masyarakat Adat Sebagai Subyek Hak Berserikat di Indonesia (Analisis Terhadap Keterlibatan Aliansi Masyarakat Adat Nusantara dalam Putusan Mahkamah Konstitusi No. 35/PUU-X/2012)," *Jurnal Rechtsvinding: Media Pembinaan Hukum Nasional* 8, No. 1 (2019): 19, <https://doi.org/10.33331/rechtsvinding.v8i1.300>.

justice". In the context of economic and business liberalism, the power of capital is the main force, so whoever owns the capital has the power. The context in Pancasila and Article 33 of the RI Constitution does not want that. Social justice must be interpreted as "joint justice" in realizing "social welfare".

In practice, social welfare must be interpreted by investors who can establish PT and the community and small entrepreneurs, in this case, the SMEs. The PT Act provisions do not facilitate small entrepreneurs, in this case, the SMEs, to establish a PT because the philosophical foundation of the PT Act only emphasizes economic liberalization and does not provide a place of precision for the family economy. The provisions of Article 33 of the the RI Constitution, which must be read holistically, actually mandate a "plenary" reading of the construction of social justice. Social justice requires the role of the state as a policy maker (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*) and supervision (*toezichthoudensdaad*) for the greatest prosperity of the people, in the context of the state's efforts to provide regulation and policymakers, the government and The House of Representatives of the Republic of Indonesia revised the PT Act regarding the final provisions of the PT through the Job Creation Law.

Furthermore, regulations related to the Job Creation Law are also contained in the PP UKM, providing an opportunity for SMEs legal entities to establish PT. Of course, this is a progressive effort that must be appreciated because, from various "negative" aspects and perceptions of the Job Creation Law, there are positive efforts to restore the dignity of social justice in Pancasila and Article 33 of the the RI Constitution which the Law reduces on PT. The social justice aspect has been fulfilled by revising the provisions for establishing PT by the Job Creation Law and the PP UKM. Social justice, in this case, has "opened" the view and paradigm that PT only belongs to the parties who have it. The identity of the PT and its real capital has been "destroyed" by the provisions of the Job Creation Law and the PP UKM. PT is currently an "entity" for all groups, both parties who have and parties who have small capital, such as SMEs. Based on the description above, the urgency of the social justice aspect of the Job Creation Law and its derivative regulations related to the ease of SMEs in establishing limited companies has been facilitated by the revision of the provisions of the Job Creation Law and its derivative regulations; so that PT is not only dominated by investors but can also empower SMEs. That is what reflects the essence of social justice, which seeks to prosper all levels of Indonesian society

CONCLUSION

The essence of the change in the provisions of the limited company in the Job Creation Law and its derivative regulations is to emphasize the principle of kinship in the national economy while at the same time providing opportunities for SMEs to establish a Limited Company because of the provisions of the PT in the Job Creation Law alternatively, that is, it may be established based on the provisions of a capital partnership or partnership by SMEs. The urgency of the social justice aspect of the Job Creation Law

and its derivative regulations related to the ease of SMEs in establishing limited companies has been facilitated by the revision of the provisions of the Job Creation Law and its derivative regulations so that PT is not only dominated by investors but can also empower SMEs. That is what reflects the essence of social justice, which seeks to prosper all levels of Indonesian society. The results of this study suggest that in the formation and testing of law related to the national economy, it is necessary to read and understand Article 33 of the RI Constitution comprehensively and holistically.

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