THE LEGAL RATIONALE BEHIND THE DETERMINATION OF MINIMUM CAPITAL REQUIREMENTS FOR LIMITED LIABILITY COMPANIES BY FOUNDERS IN INDONESIA

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Abstract
Changes in regulations regarding the minimum capital requirements for limited liability companies have brought implications for corporate law in Indonesia. Indirectly, the absence of a minimum capital threshold as essential wealth owned by the company is neither necessary nor urgent as a requirement for the establishment or operation of a limited liability company. The government's rationale for changing these provisions aligns with the mandate of the Academic Manuscript of the Draft Law Number 11 of 2020 on Job Creation, which aims to simplify and facilitate the growth of Micro and Small Enterprises in the economy. This study will normatively analyze and interpret the provisions regarding the minimum capital requirements. It employs a legislative approach and a historical approach to explore the legal rationale (ratio legis) behind the establishment of capital requirements in previous regulations. The findings broadly conclude that the ratio legis for the minimum capital regulation in Indonesia depends on economic conditions and the principle of ease of doing business.However, there is an ambiguity in the regulation of minimum capital requirements in Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation as Law (hereinafter referred to as the Job Creation Law), which replaces Law Number 11 of 2020 on Job Creation. Specifically, the phrase «decision of the founder» used to determine the amount of capital differs from the phrase in the regulatory reference in the Academic Manuscript of the Job Creation Law, which is Government Regulation Number 29 of 2016 on Changes to Limited Liability Company Capital Requirements, where the phrase is «agreement of the founders.» The Job Creation Law does not acknowledge the existence of a capital partnership, thus the phrase needs to be reconsidered, as capital partnership constitutes a company based on an agreement.

Keywords: Ratio Legis; Minimum Capital; Job Creation Law

1. Introduction

In the context of Indonesia's economy, business entities play a crucial role in driving

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economic growth and enhancing public welfare. Various forms of business entities, ranging from sole proprietorships to legally recognized corporate bodies, significantly contribute to the national economic landscape. At the most basic level, individual entrepreneurs, such as sole proprietorships, dominate the informal sector with relatively limited capital. At the mid to upper levels, business entities formed by groups of individuals include both non-legal entities, such as Firms and Limited Partnerships (Commanditaire Vennootschap), and legal entities, such as Limited Liability Companies (LLCs). Among these, LLCs are the preferred choice due to their legal protections for owners and stakeholders, offered through the concept of limited liability. This legal protection separates the personal assets of the owners from the liabilities of the company, providing legal certainty and security for investments made (Watson, 2019)

The legal framework for Limited Liability Companies (LLCs) in Indonesia has evolved significantly from the colonial era to the present day. During the Dutch colonial period, business entities similar to LLCs were known as Naamloze Vennootschap (NV) and were governed by the Commercial Code (Wetboek van Koophandel), which remained in effect even after Indonesia gained independence. Over time, the Indonesian government began drafting specific regulations for LLCs, starting with the enactment of Law Number 1 of 1995 concerning Limited Liability Companies. This regulation was later replaced by Law Number 40 of 2007 on Limited Liability Companies (Company Law), which serves as the primary legal foundation for the establishment and operation of LLCs in Indonesia. The regulatory landscape continued to evolve with the introduction of the Job Creation Law, which amended several provisions in the Company Law to adapt to the needs of economic development and simplify the process of business formation. These changes were driven by the government's desire to improve the ease of doing business in Indonesia, enhance economic competitiveness, and support the growth of micro, small, and medium enterprises (Rosser & Edwin, 2010). This provides legal protection for assets with liability as stipulated in the founding agreement of the legal entity (Dewi, 2021).

The changes in the minimum capital requirements introduced by the Job Creation Law and Government Regulation No. 8 of 2021 represent a significant shift in Indonesia's business regulation landscape. Previously, the Company Law stipulated a minimum capital requirement for establishing a Limited Liability Company (LLC), which was seen as a barrier for small and medium-sized enterprises (SMEs) looking to formalize their businesses. However, the Job Creation Law amended these provisions, allowing the founders of a company to determine the amount of authorized capital based on their agreement, effectively removing the mandatory minimum capital requirement. This regulatory adjustment aims to simplify business establishment processes, reduce barriers to entry, and enhance Indonesia's Ease of Doing Business (EODB) ranking. By eliminating stringent capital requirements, the government seeks to foster a more inclusive business environment that supports the growth and development of SMEs, thus contributing to economic diversification and increased entrepreneurial activity

The removal of the minimum capital requirement introduces several key issues that warrant closer examination, particularly concerning potential legal challenges, the impact on creditor protection, and the broader implications for the business environment. Without a mandated minimum capital, there are concerns that companies may lack sufficient financial stability, which could jeopardize creditors' interests and increase the risk of insolvency. This regulatory shift may also lead to debates on whether the legal protection traditionally afforded by the Limited Liability Company structure adequately balances the needs of business flexibility with financial responsibility. The focus of this research is to critically analyze these emerging issues and assess the broader impact of the regulatory changes on Indonesia's business landscape. This analysis is crucial as it seeks to provide insights into whether the current legal framework effectively supports economic growth while safeguarding the interests of stakeholders, including business owners, creditors, and the public at large

According to M. Yahya Harhap, the characteristics of a Limited Liability Company (LLC) as a capital partnership, generally defined under Article 1 point 1 of the Company Law, include the following: (1) it is a partnership consisting of capital/shares; (2) its establishment is based on an agreement; (3) it engages in specific business activities; and (4) the company is formed through a legal process involving government approval (Harahap, 2011).

The legal framework for Limited Liability Companies (LLCs) in Indonesia highlights two key aspects: the division into shares and establishment through a Notarial Deed. Capital plays a critical role in the formation of an LLC, governed by Articles 32 and 33 of the Company Law, which outline basic capital requirements. However, the Job Creation Law (Law No. 6 of 2023) and its regulation, PP 8/2021, amended these provisions, removing the minimum capital requirement and allowing founders to determine the authorized capital. This change aims to simplify business establishment, enhance the Ease of Doing Business (EODB) ranking, and support the growth of micro and small enterprises, aligning with global practices like those in Malaysia, where authorized capital is not mandatory. While the removal of minimum capital requirements encourages business formation, it raises concerns about creditor protection and the adequacy of asset safeguards, as previously, a set minimum capital provided a clearer guarantee of legal certainty and financial stability for stakeholders.

This research employs a normative approach with doctrinal research methods to analyze the relevant laws and legal doctrines concerning changes in the minimum capital requirements for limited liability companies. This approach is chosen because the study focuses on a systematic examination of legal texts, particularly the Job Creation Law and related regulations in Indonesia, as well as comparisons with similar regulations in other countries, such as the Netherlands, Malaysia, and Vietnam. The normative-doctrinal approach allows for an in-depth understanding of the legal framework and the principles underlying these regulatory changes (Mathias M Siems, 2016).

The research begins with a literature review to gather primary and secondary legal materials, such as laws, government regulations, and academic journals related to capital requirements for companies. These sources are analyzed using qualitative analysis methods, focusing on the interpretation of legal texts and conceptual discussions on the legal principles underlying the regulatory changes. This approach allows for a thorough examination of the impact and implications of the legal modifications on the business landscape.

To understand the historical and sociological context of the regulatory changes, this study also employs historical and comparative approaches. The historical approach is used to trace the development of capital regulations in Indonesia and other countries, providing a background on how these regulations have evolved over time. The comparative approach is applied to examine similar regulations across various jurisdictions, identifying patterns and influences that may affect policymakers. This dual approach helps in drawing connections.

2. Sociological and Historical Aspects of Corporate Regulation in Indonesia

According to Philipus M. Hadjon, ratio legis refers to the underlying spirit or rationale behind the formation of legislation. Satjipto Rahardjo, on the other hand, states that ratio legis is a legal principle (Priyatno et al., 2023). This section provides the background, research objectives, and structure of the study. The research focuses on the evolving regulations regarding the minimum capital requirements for limited liability companies (LLCs) in Indonesia. The background highlights the historical and sociological factors influencing these regulatory changes, as well as the comparative perspectives with similar legal frameworks in other countries such as the Netherlands, Malaysia, and Vietnam. The objective of this research is to analyze the legal rationale (ratio legis) behind the amendments to capital requirements, assess their impact on business actors and

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creditors, and explore the broader implications for Indonesia's business environment. The structure of the study is systematically divided into several subchapters, beginning with an exploration of theoretical concepts, followed by a detailed review of historical and legal developments, a comparative analysis with international regulations, and concluding with a discussion on the future legal challenges and policy recommendations. This structured approach aims to provide a comprehensive understanding of the significance of regulatory changes and their impact on the legal and economic landscape.

This section outlines the origins of corporate regulation from the VOC era to the Dutch colonial period. During the VOC (Dutch East India Company) era, the foundation of business and corporate regulations was established as the VOC functioned as one of the first public limited liability companies in history. Founded in 1602, the VOC introduced the concept of limited liability for shareholders, a characteristic that became a defining feature of modern corporations (Sjawie & SH, 2017). Following the dissolution of the VOC, the Dutch East Indies government took over its operations, and the Commercial Code (Wetboek van Koophandel) was introduced. This code further elaborated on business responsibilities and procedures, marking the first codification of commercial law in Indonesia. Initially, the Commercial Code was applied only to Europeans, while indigenous people and other foreign residents were subject to their customary laws, which led to complexities due to diverse and unclear customary practices in business interactions (Fernando et al., 2022). Despite its limitations, the Commercial Code laid the groundwork for future corporate regulations, although it did not yet include provisions on minimum capital requirements for companies, focusing instead on general corporate structures and responsibilities.

i. VOC Era and Dutch East Indies Period

This section outlines the origins of corporate regulation from the VOC era to the Dutch colonial period. During the VOC (Dutch East India Company) era, the foundation of business and corporate regulations was established as the VOC functioned as one of the first public limited liability companies in history. Founded in 1602, the VOC introduced the concept of limited liability for shareholders, a characteristic that became a defining feature of modern corporations (Sjawie & SH, 2017). Following the dissolution of the VOC, the Dutch East Indies government took over its operations, and the Commercial Code (Wetboek van Koophandel) was introduced. This code further elaborated on business responsibilities and procedures, marking the first codification of commercial law in Indonesia. Initially, the Commercial Code was applied only to Europeans, while indigenous people and other foreign residents were subject to their customary laws, which led to complexities due to diverse and unclear customary practices in business interactions (Fernando et al., 2022). Despite its limitations, the Commercial Code laid the groundwork for future corporate regulations, although it did not yet include provisions on minimum capital requirements for companies, focusing instead on general corporate structures and responsibilities.

ii. The New Order Era (1967 – 1998)

This section examines regulatory changes during the New Order and their impact on minimum capital requirements for companies. During the New Order era (1967–1998), the Indonesian government introduced Law Number 1 of 1995 concerning Limited Liability Companies, which marked a significant shift from previous regulations under the Commercial Code. This law established a formal framework for LLCs separate from the older provisions and introduced a minimum authorized capital requirement to stabilize and oversee the growth of companies during a period of economic turbulence, particularly the monetary crisis in the late 1990s (Allen et al., 2021), The imposition of minimum capital requirements was intended to ensure that companies had sufficient financial capacity, which was seen as crucial during the economic crisis that weakened the Indonesian rupiah.

In the Reform Era, these regulations were revisited with the enactment of Law Number 40 of 2007, which amended the earlier law by adjusting the minimum capital to IDR 50,000,000 to reflect changes in the economic environment and the value of the rupiah post-crisis. This adjustment aimed to balance the need for investor protection with the realities of Indonesia's economic recovery. Corporate law observers noted that the increase in minimum capital during this period was partly driven by the need to stabilize the economic framework and provide greater security to creditors amid economic uncertainties. These changes set the stage for further reforms in the following decades, reflecting ongoing efforts to adapt corporate regulation to Indonesia's evolving economic landscape.

iii. Era of President Susilo Bambang Yudhoyono and President Joko Widodo

This section outlines the significant changes in minimum capital requirements for companies during the administrations of President Susilo Bambang Yudhoyono and President Joko Widodo. Under President Susilo Bambang Yudhoyono (2004–2009), the existing regulations were revised with the enactment of Law Number 40 of 2007 concerning Limited Liability Companies. This law updated the minimum authorized capital from IDR 20,000,000 to IDR 50,000,000 to align with the economic realities post-New Order and to provide a more stable financial foundation for companies. The adjustment was seen as necessary to protect creditors and maintain investor confidence, particularly in the aftermath of the economic crisis that had significantly impacted the value of the rupiah(Alwajdi, 2020). Under President Joko Widodo's administration (2014–present), the approach shifted towards enhancing the ease of doing business. In a bold regulatory reform, Government Regulation Number 29 of 2016 was introduced, removing the fixed minimum capital requirement and allowing the amount of authorized capital to be determined by the agreement of the company's founders. This change was part of a broader strategy to improve Indonesia's Ease of Doing Business (EoDB) ranking and stimulate investment, particularly in micro, small, and medium enterprises (MSMEs). The removal of the minimum capital requirement was a significant departure from previous policies, reflecting a new focus on flexibility and reduced barriers to business entry. These reforms were intended to foster a more inclusive business environment, encouraging entrepreneurship and investment across all levels of the economy.

3. Aspects of Lawmaking and Legal Principles in the Job Creation Law

The omnibus law approach represents a significant legislative innovation in Indonesia, marking the first time a comprehensive method of consolidating multiple laws into a single, overarching regulation has been employed. Law Number 6 of 2023, known as the Job Creation Law, is a landmark example of this approach. An omnibus law is a legislative technique used to amend, repeal, or introduce various laws that are interconnected, even if they cover diverse areas of regulation (Prasetyo et al., 2022). The main rationale behind adopting an omnibus law is to streamline and harmonize regulations that would otherwise be scattered and sometimes contradictory, thereby enhancing the efficiency of lawmaking and addressing complex legal challenges comprehensively. Jimly Asshiddiqie outlines three conditions for implementing an omnibus law: laws that are directly related and need amendment, laws that are indirectly related but interconnected in practice, and laws that are unrelated but converge in application. In Indonesia, the omnibus law technique was first championed by Sofyan Djalil, the then Coordinating Minister for Economic Affairs, who sought to address the fragmented nature of Indonesian legislation by introducing a more unified regulatory framework.

The regulation of minimum capital requirements in Indonesia has evolved significantly from the Dutch colonial era to the modern period. During the colonial period, the Commercial Code (Wetboek van Koophandel), influenced heavily by Dutch

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legal traditions, introduced the concept of limited liability and structured regulations around corporate capital, although specific minimum capital requirements were not yet standardized. The early regulations were primarily aimed at protecting creditors and maintaining financial stability within the business environment. Following Indonesia's independence, the regulatory framework began to adapt to the nation's unique economic conditions, leading to the establishment of more defined capital requirements with the enactment of Law Number 1 of 1995, which imposed a minimum authorized capital to ensure the financial integrity of companies. During the New Order and Reform Era, these regulations were revised to address economic challenges and align with changing market dynamics, particularly in response to financial crises that exposed vulnerabilities in the corporate sector. he shift towards more flexible capital requirements continued into the 21st century, culminating in the Job Creation Law, which significantly reformed the Company Law by removing fixed minimum capital thresholds. This evolution reflects Indonesia's ongoing efforts to balance historical legal principles with modern economic needs, aiming to create a more dynamic and accessible business environment while still ensuring financial accountability and protection for stakeholders.

The Job Creation Law faced significant legal challenges when, on November 25, 2021, the Constitutional Court of Indonesia declared it conditionally unconstitutional in case No. 91/PUU-XVIII/2020. The court ruled that the legislative process used to enact the law did not comply with procedural requirements outlined in the 1945 Constitution of Indonesia, particularly regarding public participation and transparency. The court mandated that the government revise the law within two years; otherwise, it would be declared permanently unconstitutional (Prasetyo et al., 2022). This decision had profound implications for the legal landscape, creating a period of uncertainty for businesses and regulators who had begun adapting to the new provisions of the Job Creation Law. In response, the government issued Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 on Job Creation on December 30, 2022, as an interim measure to maintain the law's provisions while addressing the procedural issues highlighted by the court. This rapid legal response aimed to ensure continuity in the regulatory framework and mitigate disruptions to Indonesia's business environment, reaffirming the government's commitment to improving the ease of doing business and attracting investment despite the court's ruling.

The Job Creation Law is grounded in a philosophical commitment to enhancing the right to work and ensuring a decent standard of living for all citizens, as enshrined in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This provision underscores the government's obligation to create opportunities for employment and promote economic welfare as fundamental aspects of national development. The Job Creation Law aims to achieve these goals through several strategic approaches: fostering investment, supporting the growth of Micro, Small, and Medium Enterprises (MSMEs), and enhancing the quality of the workforce. By streamlining and simplifying regulatory requirements, the law seeks to reduce barriers for businesses, particularly new and small enterprises, thereby creating a more dynamic and inclusive economic environment. Additionally, the law emphasizes improving the quality of human resources through training and skill development initiatives, ensuring that Indonesia's workforce can meet the demands of a rapidly evolving market. These strategies collectively aim to drive economic growth, increase job opportunities, and improve living standards, reflecting the broader goal of aligning Indonesia's legal and economic frameworks with global standards of ease of doing business.

The Job Creation Law brought significant amendments to the Company Law, particularly concerning authorized capital requirements for Limited Liability

Companies (LLCs). Previously, the Company Law stipulated a minimum authorized capital that companies were required to meet, which was seen as a barrier for small and new businesses. The Job Creation Law introduced flexibility by allowing the amount of authorized capital to be determined by the founders of the company, rather than being set by the government (Job Creation Law, 2023). This change reflects the government's rationale to reduce regulatory burdens and encourage entrepreneurship, particularly among Micro, Small, and Medium Enterprises (MSMEs). By removing the fixed minimum capital requirement, the law aims to create a more inclusive and accessible business environment, fostering growth and investment at all levels. This shift aligns with global practices observed in countries such as Malaysia and Vietnam, where similar deregulation has been implemented to promote ease of doing business and stimulate economic development. The new provisions grant business founders greater autonomy and responsibility in determining their financial structures, reinforcing the principle of freedom of contract and aligning Indonesia's corporate regulations with international standards.

The Job Creation Law's removal of minimum capital requirements for Limited Liability Companies (LLCs) in Indonesia mirrors similar regulatory shifts in other countries, such as Malaysia and Vietnam. In Malaysia, the Companies Act 2016 abolished the minimum capital requirement, allowing companies to be established with any amount of capital as determined by the founders. This deregulation aims to reduce entry barriers for new businesses, encouraging entrepreneurship and investment by simplifying the process of company formation (Ariani, 2012). Similarly, Vietnam's Law on Enterprises permits LLCs to set their initial capital based on the company's needs without a mandated minimum, aligning regulatory practices with the goal of promoting small and medium enterprise growth.

These international examples provide relevant benchmarks for Indonesia's decision to adopt a more flexible approach to capital requirements, reflecting a global trend towards regulatory environments that prioritize ease of doing business. However, the influence of Dutch legal traditions on Indonesian corporate law adds a unique dimension to this regulatory shift. Historically, the Dutch system maintained stricter capital requirements to protect creditors and ensure financial stability, as seen in the distinctions between public (N.V.) and private (B.V.) companies in the Netherlands. Despite these differences, the Dutch approach also evolved, eventually relaxing its capital requirements for B.V.s to foster a more business-friendly climate (Verkerk, 2010). Indonesia's recent reforms reflect an effort to balance these influences, adapting global best practices to the local context while maintaining legal protections that safeguard the business ecosystem.

On November 25, 2021, the Constitutional Court of Indonesia ruled in case No. 91/PUU-XVIII/2020 that the Job Creation Law (Law No. 11 of 2020) was conditionally unconstitutional. The Court found that the legislative process for enacting the law did not comply with the procedural standards required by the 1945 Constitution, particularly in terms of public participation and transparency. The Court ordered that the law must be revised within two years, and if the revisions were not completed within this period, the law would be deemed permanently unconstitutional. This decision created significant implications for the government, legislators, and business actors, who were required to navigate the legal uncertainties surrounding the law's status. In response, the government issued Government Regulation in Lieu of Law (Perpu) No. 2 of 2022 on Job Creation on December 30, 2022, as an interim measure to uphold the law's provisions while addressing the Constitutional Court's directives. This regulatory move underscored the government's commitment to maintaining legal continuity and minimizing disruptions in the business environment during the revision period.

Following the issuance of Government Regulation in Lieu of Law (Perpu) No. 2 of 2022, the regulation was subsequently re-established as Law No. 6 of 2023, which officially reinstated the provisions of the Job Creation Law. This new legislation introduced several amendments to existing laws, including significant changes to the Limited Liability Company Law (Law No. 40 of 2007). One of the most impactful amendments was related to authorized capital requirements for companies. Under the revised law, the amount of authorized capital is no longer fixed by the government; instead, it is now determined by the founders of the company. This change grants greater flexibility and autonomy to entrepreneurs, allowing them to decide the capital structure that best suits their business needs (Job Creation Law, 2023). By reducing the regulatory burden, this amendment aims to encourage the establishment of new businesses, particularly for micro, small, and medium enterprises (MSMEs), fostering a more dynamic and inclusive business environment in Indonesia.

The Job Creation Law is underpinned by a philosophical commitment to enhancing the right to work and achieving a decent standard of living for all citizens, as outlined in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This provision emphasizes the state's obligation to create conditions that promote employment and improve welfare as part of national development. The Job Creation Law adopts several key strategies to fulfill these goals: encouraging investment, supporting Micro, Small, and Medium Enterprises (MSMEs), and improving the quality of the Indonesian workforce. By simplifying regulations and reducing bureaucratic barriers, the law seeks to make it easier for businesses, especially MSMEs, to establish legal business entities with lighter legal responsibilities. This approach is designed to create a more inclusive and supportive environment for micro and small enterprises, enabling them to access formal legal status that facilitates better access to financial resources and market opportunities. Overall, the strategic direction of the Job Creation Law reflects a broader effort to align Indonesia's economic and legal frameworks with the needs of a modern and competitive economy.

4. Conclusions

The amendments to the Company Law as part of the Job Creation Law represent a pivotal shift in Indonesia's regulatory landscape, reflecting a broader effort to modernize and streamline business regulations to foster economic growth. By removing the minimum capital requirements and granting greater flexibility to company founders, these changes aim to reduce barriers to entry, promote entrepreneurship, and enhance the overall ease of doing business in Indonesia. While this approach aligns with global and regional trends, it also introduces new challenges, particularly concerning creditor protection and financial accountability. As Indonesia continues to adapt its legal framework to meet the demands of a dynamic and competitive global market, it is essential for policymakers to monitor the impacts of these reforms closely. Ensuring that legal safeguards are maintained while encouraging business innovation will be crucial for sustaining long-term economic development and fostering a resilient business environment. This ongoing evolution in corporate regulation highlights the balance that must be struck between reducing regulatory burdens and protecting the interests of all stakeholders in Indonesia's growing economy.

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