The Fairness Principle in Regulation Regarding Sole Proprietorship: How it Works?

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Abstract

The formation of a Sole Proprietorship for Micro and Small Enterprises (MSEs) is one of the legal policies of the Job Creation Law, which is then followed up in the government regulations on Individual Companies for MSEs, which in concept paradigm changes the conception of a Limited Liability Company which was initially a stock partnership into a legal entity that can be formed due to a share partnership or partnership. This study explores the fairness principle concerning the legal policy of establishing a Limited Liability Company for MSEs in Indonesia through the Job Creation Law and its derivative regulations. This research is normative legal research. The results of the study confirm that the existence of MSEs in the Employment Creation Act and the PP for Individual Companies for MSEs is more substantial because in addition to obtaining legal certainty guarantees through the form of corporate legal entities, they also have the orientation of various legal protections that accompany them. That is related to the state's efforts to facilitate MSEs so that they can be empowered and become an effort to increase competitiveness in the business sector. In addition, the fairness principle in the regulation regarding individual companies has been correct as formulated in the Job Creation Law and its implementing regulations. It is also necessary to improve the legislators' efforts, especially when the job creation law is still unconstitutional, with conditions to further emphasize the fairness principle in establishing a sole proprietorship for MSEs.

I. Introduction

Law is one of the regulatory instruments and managing community life so that public relations occur orderly, fair, and prosperous. Inter-community relations that guarantee the essence of justice and empower prosperity are one of the orientations of the existence of law. Concerning the aspects of justice and the prosperity of society, the field of business law has an essential orientation in making it happen.(Devita 2021) Business law is one of the fields of law that focuses on various concepts, problems, and business practices in society, whose orientation is in the form of profit.(Arifin and Iqbal 2020) Profit is an essential aspect of business law.(Lerman, Schrag, and Rubinson 2020) That is because almost every business activity in society is directed at achieving profit. Even so, the law as a framework for business activities does not only look at profit mathematically and pragmatically, which is only based on the amount and material aspects of profit.(Harding 2018) The law, as the guardian of the rules of the game in business, also looks at the moral dimension of the business so that the business can generate profits that have the proper value.

The value of propriety in profit, which is the main essence of business, emphasizes that profit is not only concerned with those who get much profit in business activities.(Vega 2018) Profit in propriety also indicates the existence of fair business competition, which still provides specific procedures and mechanisms for parties with low bargaining positions to participate in business competition. The value of propriety is also essential for business practices, especially concerning the moral responsibility of the state to facilitate parties whose business position is "weak" to obtain special facilities and be empowered to participate in business competition in general. Exploration of this value is an essential essence for business law because, as a framework and rules of the game, the law must also explore the business's philosophical aspects and moral values to be maintained and applied in business practices.(Alistar (Hîrlav) 2019) In this context, business law mandates legal safeguards in the form of exploring values and morals as a means of realizing a humane business.One of the roles of the state in business law is the provision of special facilities and regulations for parties with a weak position in the business.

That is an example of the state's idea to facilitate the formation of Sole Proprietorships (*Perseroan Perseorangan*) for Micro and Small Enterprises (MSEs) or *Usaha Mikro dan Kecil* (UMK). The establishment of an individual company for MSEs is one of the legal policies in Law Number 11 of 2020 concerning Job Creation (Job Creation Law) which is then followed up in Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Changes, and Dissolution of Companies—fulfilling the Criteria for Micro and Small Enterprises (PP for Individual Companies for MSEs), which conceptually changes the concept of a Limited Liability Company (*Perseroan Terbatas* or PT) which was initially a stock partnership into a legal entity that can be formed due to a stock partnership or for MSEs that have met the terms and conditions specified. The legal policy that provides "space" for MSEs to establish Sole Proprietorships is a progressive step and a systematic effort to empower MSEs as the primary basis for the community's economy.(Nabilah Apriani 2022) This study explores the fairness principle in relation to the legal policy of establishing a Limited Liability Company for MSEs in Indonesia through the Job Creation Law and its derivative regulations.

Research on individual companies for MSEs in the aspect of legal science has been conducted by: (i) Muhammad Faiz Aziz dan Nunuk Febriananingsih (2020) concerning *Perseroan Terbatas (PT) Bagi Usaha Mikro Kecil (UMK) Melalui Rancangan Undang-Undang Tentang Cipta Kerja* with a focus on the comparison of legal policies in other countries regarding the formation of private companies;(Muhammad Faiz Aziz 2020) (ii) Yuliana Duti Harahap, Budi Santoso, Mujiono Hafidh Prasetyo (2021) about *Pendirian Perseroan Terbatas Perseorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja* which focuses on the mechanism of legal liability in private companies.(Yuliana Duti Harahap, Budi Santoso 2021) Desak Putu Dewi Kasih, A.A. Gede Duwira Hadi Santosa, I Made Marta Wijaya, Putri Triari Dwijayathi (2022) concerning *Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal* which focuses on the paradigm shift between Limited Liability Companies prior to the existence of the Job Creation Law and the presence of the Job Creation Law which confirms the existence of individual companies for MSEs.(Kasih 2022)

Of the three previous studies, no specific one discusses the fairness principle in the regulation of legal policies in the form of individual companies for MSEs. Thus, compared to the three previous studies, this research is an original study. This study seeks to answer two problem formulations: (i) What are the existence and implications of Sole Proprietorship in the Job Creation Law and its derivative regulations? And (ii) What is the aspect of the fairness principle in the regulation regarding individual companies in the Job Creation Law and its derivative regulations?

2. Research Method

This research is a normative legal research that examines various laws and regulations relating to the regulation of Sole Proprietorship.(Eka N.A.M. Sihombing 2022) The study of positive law is an important study of normative legal research.(Duke 2019) The primary legal materials in this study include: the 1945 Constitution of the Republic of Indonesia, Limited Liability Company Law, the Job Creation Law, and the PP on Individual Companies for MSEs. The approach in this study uses a statutory approach and a conceptual approach.

3. Results and Discussion

Sole Proprietorship: The Existence and Implication

The Job Creation Law is one of the laws that have an orientation towards the legal empowerment of MSEs. Although, on the one hand, the Job Creation Law creates a commotion in its drafting process, substantially several aspects of the Job Creation Law have a progressive orientation towards MSEs.(Nadzir A. Firdaus 2021) 'The noise' regarding the Job Creation Law can be understood, especially from three aspects. *First*, the Job Creation Law was formed using the omnibus bill method, which replaces, revises, and cancels several laws through one Law.(Disantara et al. 2022) The Job Creation Law substantially overturned 70 more sectoral laws.(Juwana, Stephanie, Gabriella Gianova Laidha 2020) That is a process that is the first time in Indonesia and is a legal reform in Indonesia. *Second*, the Job Creation Law substantially aims to harmonize the various substances in the Law that are problematic, especially related to overlapping laws and regulations.(Santoso 2021) The problem becomes even more significant considering that the substance discussed in the Job Creation Law is not only one field but several related fields, so several clusters are needed to discuss the Job Creation Law. The number of substances in the Job Creation Law that must be harmonized causes new problems, especially those related to typos, new disharmony, and fast-paced discussions.(Sulistyawan 2019) *Third,* the Job Creation Law was formed in a relatively quick and short time for the size of the Law, which regulates many substances so that it is considered a "Quick Law" and seems non-participatory.(Suryati, Disurya, and Sardana 2021) Of course, the public outcry regarding the Job Creation Act is understandable, considering the three aspects above

Even so, the presence of the Constitutional Court Decision No. 91/PUU-XVIII/2020, which confirms that the Job Creation Law is conditionally unconstitutional and requires improvement,(Efendi and Disantara 2022) is undoubtedly one of the essential things lawmakers must consider.(Kristianti 2021) Apart from that, although there are several problems in the Job Creation Law, not all substance has a negative orientation in their application. One of the positive and progressive substances in the Job Creation Law is related to the presence of the Sole Proprietorship Law policy in the Job Creation Law and its

implementing regulations.(Suntoro 2021) A sole Proprietorship is a legal construction and extension of the understanding of a Limited Liability Company in general, which emphasizes the nature of a Limited Liability Company as a shared partnership. Sole Proprietorship in the Employment Creation Act progressively constructs Limited Liability Companies into two aspects: those based on a shared partnership or Individual Companies for MSEs that meet the requirements.

Substantively, the presence of an individual company for MSE actors is one of the legislators' efforts and progressive orientations for the welfare of small communities.(Kristianti 2021) In enforcing the legal policy of individual companies for MSE actors, the legislators do not seem to be trapped in a *rigid* positive legal creed. They are oriented towards the general conception of a limited liability company.(Marpi et al. 2021) The legislators in formulating legal policies for individual companies for MSE actors seem to be influenced by a progressive and responsive view that sees the reality of MSEs in society that seems to be "stepchildren" of business practices in Indonesia. That is evidenced by data from the Ministry of Cooperatives and SMEs that until May 2022, SME data in Indonesia has reached 19 million MSEs.(CNN Indonesia 2022) That means that SMEs are one of the dominant businesses carried out by the Indonesian people. The dominance of MSEs as the dominant basis of business for the Indonesian people can be understood based on at least three arguments.(Munandar 2020)

First, as the dominant business base carried out by the community, MSEs can be understood as driving the wheels of the Indonesian economy, especially the lower middle class. It can be understood that the majority of Indonesian people in business are in the lower middle range. *Second*, MSEs do not require significant capital and have low to medium business risks. That is what is loved by the middle and lower levels of society because various aspects of MSEs are pro-community with a lower-middle economy. *Third*, the large number of MSEs has transformed into the "heart" of Indonesian business, apart from the number also because of the intensity of the business scope, which is dominant in the lower middle-class community with competitive prices. That confirms that MSEs are born from the lower middle class and for the lower middle-class people (although some MSEs have exported and Go-International,

that number is not dominant).(Syam et al. 2021) For this reason, it is natural that MSEs become one of the essential things in business in Indonesia.

Business in Indonesia actually has an orientation on aspects of work that prioritizes domino patterns to empower the surrounding community. That is certainly different from the business orientation in general, which is capital-intensive with an emphasis on significant capital, high-risk, and sophisticated and technology-based equipment. That requires significant capital and certainly cannot be fulfilled and implemented by the general public with a medium to lower business range. If you refer to this view, the labor-intensive orientation is relevant to the MSEs business carried out by most Indonesian people.(Suranto 2020) That is because MSEs are implemented with not-so-significant capital and prioritize the urgency of active community involvement from various aspects. That makes MSEs, even with not so much income, can be a means to create jobs for the surrounding community as well as "share" sustenance with the surrounding community.

Importantly, the role of MSEs in practice in Indonesia makes the law must be responsive to protect MSEs as one of the "lives" of Indonesian businesses. Efforts to protect the law are important because the state has one of the obligations to implement concrete aspects of the law for citizens. In this case, the state must take the initiative to form a legal product that is pro-to MSEs, one of which is to provide a means for MSEs to have legal entity status. In fact, in empirical practice, many MSEs do not have legal entity status, so their legality is constrained in certain aspects.(Nabilah Apriani 2022) Furthermore, by granting the status of a legal entity, in particular the status of a sole proprietorship, it is hoped that MSEs can compete and become a business commodity that can drive and empower the businesses of the lower middle class. In this case, the legislators took the initiative to present the Employment Creation Act and the PP of Individual Companies for MSEs.

Conventionally, before the release of the Job Creation Law, the regulation regarding the company's legal entity had been regulated in the Law No. 40 of 2007 on Limited Liability Companies (Limited Liability Company Law); that Limited Liability Company a Limited Liability Company is a "capital partnership" in the form of shares.(Yuliana Duti Harahap, Budi Santoso 2021) The brief orientation of the Limited Liability Company Law teleologically

indicates that a Limited Liability Company is a business legal entity that prioritizes significant capital and is fully profit-oriented. The construction of a company legal entity in the Limited Liability Company Law has at least an impact on MSEs, especially in three aspects.(Radith Prawira Adriadi, Shandy Aditya Pratama 2021) *First,* the Limited Liability Company Law implicitly identifies that a company legal entity is a legal entity that people from the upper middle class can only establish. That is a contrario understandable because most business people in Indonesia are the lower middle class; of course, there are very few opportunities to establish Limited Liability Company. One of the things that the lower middle class can do is with MSEs business entities, which in practice have various problems, especially related to the legal aspect and various other aspects.

Second, the Limited Liability Company Law specifically identifies Limited Liability Company as a "capital-based" business, which means it does not have a sustainable orientation as a labor-intensive MSEs business. In a capital-intensive business, the business orientation starts with a capital and ends with profit. In fact, in MSEs with a labor-intensive basis, business entities are oriented as efforts to optimize and facilitate community businesses whose goal is to empower the community. Empowering the community is an ethical goal that can not only be measured mathematically and quantitatively as capital and stock. That is what requires changes to the Limited Liability Company Law to empower MSEs as a business base for the lower middle class.(Anggreany Arief 2021) *Third,* the Limited Liability Company Law exclusively places profit as a business goal. In modern developments, business is not just profit and loss; business starts a new orientation in the form of empowerment and a sustainable spirit. That confirms that the Limited Liability Company Law has not facilitated the massive empowerment of MSEs.

The revision in the provisions of the Limited Liability Company Law as stated in the Employment Creation Law and the PP for Individual Companies for MSEs confirms that the understanding of the legal entity of the company, especially the Limited Liability Company, must be revised and new constructions must be carried out in the future. The Employment Creation Law, as well as in the PP of Individual Companies for MSEs, offers new constructions in business in Indonesia, especially in the existence of Limited Liability Company. *First,*

Limited Liability Company becomes an inclusive sphere that is not identical with capital but also includes MSEs. That confirms that Limited Liability Company can not only be created by upper-middle business stakeholders but can also be established by lower-middle people. *Second*, Limited Liability Company is constructed on community empowerment efforts that are not only capital-based but also work-based, typical of MSEs. In this case, MSEs that have works or various types of business variations of the lower middle class can establish a Limited Liability Company, which orients that the Limited Liability Company no longer emphasizes the orientation on capital but is more labor-intensive. *Third*, MSEs have been qualified as corporate legal entities to have clear legality. That includes the clarity of legal certainty and protection.

Based on the description above, it can be concluded that the existence of MSEs in the Job Creation Law and the PP for Individual Companies for MSEs is more robust because, in addition to obtaining legal certainty guarantees through the form of corporate legal entities, they also have the orientation of various legal protections that accompany them. In addition, this has implications for the provisions and paradigms of the Limited Liability Company, which are not only based on capital. The presence of the Job Creation Law and the PP of Individual Companies for MSEs makes Limited Liability Company a capital partnership or work for the lower middle class. Limited Liability Company becomes inclusive, which can not only be established by middle to upper-class entrepreneurs but also by small communities from the lower middle class.

The Fairness Principle in Regulation Regarding Sole Proprietorship: How it Works?'

The regulation regarding Sole Proprietorship, as affirmed in the Job Creation Law and the PP for Individual Companies for MSEs, has taken a paradigm leap to ensure the essence of the value of justice in society. As a paradigm leap, the Job Creation Law and the PP of Individual

Companies have made progressive and substantive efforts regarding Limited Liability Company, which was initially exclusive, to become more inclusive. This inclusive nature is shown in the construction of the Limited Liability Company Law, which emphasizes that the nature of a Limited Liability Company is a share/capital partnership. As a stock partnership, Limited Liability Company is identical to a capital-intensive industry that prioritizes significant capital. Of course, large capital can only be done by middle-upper entrepreneurs. Job Creation Law and its implementing regulations are present to break the exclusivism of understanding about Limited Liability Company. Limited Liability Company which was initially exclusive then became more inclusive with alternative construction. The Job Creation Law stipulates that a Limited Liability Company can be formed based on a shared partnership or by an MSEs based on certain conditions.

The inclusive character of this Limited Liability Company simultaneously emphasizes the nature of the Job Creation Law, which, although still has a conditionally unconstitutional status, has several substances that are relevant to the community's legal needs. In the study of business law, the character orientation of the Limited Liability Company from exclusive to inclusive deserves a separate study, especially from the aspect of the fairness principle.(OECD 2021) The fairness principle is a new orientation in business law that does not emphasize wealth and capital as keywords (rich and capital) but emphasizes the essence of welfare as a keyword (welfare oriented).(Oltra Gras 2021) In the fairness principle, business law cannot be interpreted that the law is only a means of giving "authorization" for business actions that only foster wealth. Welfare-oriented business law sees wealth as part of the general decency of society. That means that wealth does not become the orientation and monopoly of a few certain parties but must adequately involve and empower the participation of the surrounding community.

In the context of individual companies after the job creation law, analysis using the fairness principle is important because there is a change in the Limited Liability Company paradigm from exclusive to inclusive. There are at least three urgencies why the fairness principle is appropriate to be used as a study or analysis in seeing the reality of Limited Liability Company after the Job Creation Law. *First*, the orientation of the fairness principle, which emphasizes

the welfare business emphasizes that a good business is a business that can provide benefits and at the same time contribute to the welfare of the community.(Zaid, Dawaki, and Ololade 2021) Welfare is the key word because it is synonymous with rich people and large amounts of capital in the business. That is what underlies why in the Limited Liability Company Law, a Limited Liability Company is described as a capital partnership that can only be formed implicitly by the owner of the capital. The Job Creation Law has made Limited Liability Company synonymous with capital now, more open and alternative, namely not only for capital partnerships but also for SMEs. *Second*, the welfare-oriented fairness principle is relevant to the philosophical basis for forming the Job Creation Law. The Job Creation Law philosophically seeks to implement state goals, as in the construction of the Preamble to the 1945 Constitution of the Republic of Indonesia; one of the state's goals is to "promote public welfare."

One of the consequences and orientations of promoting general welfare is to make the business a means of realizing as much welfare as possible for the community. Business cannot be understood conventionally as a means of accumulating wealth and capital. *Third*, the fairness principle follows the ideals of Indonesian law, namely Pancasila, especially in the fifth precept with the essence of justice and social welfare. Pancasila as a legal ideal (rechtsidee) must be embodied in various laws and regulations, especially those applied in the Job Creation Law and its regulations.(Shidarta 2020) Based on the three arguments above, it is actually important to discuss and analyze the fairness principle, especially in business law. This is so that the law does not just facilitate business. In the context of the fairness principle, the law must be both a facilitator and a regulator (regulator and framer) of business activities. That also confirms that the law must dare to regulate and simultaneously straighten out business practices that deviate from the ideals of Indonesian law, namely Pancasila.(Posner 2012) The fairness principle can be a touchstone and the guiding principle of Indonesian business law, with Pancasila as the ideal.(Nur Hidayat 2021) The fairness principle must be able to place business activities that are not only profit and loss but also trigger and spur the welfare of the community.

The fairness principle is a general legal principle specifically applied in business law that is coherent with the ideals of Indonesian law, namely Pancasila. The fairness principle as the principle of law, in general, has three orientations.(Himma and Bix 2017) *First,* the principle of law as a "reflection" of values in a legal norm that confirms the character of law as a normative science. Law as a science with a normative character is full of values that cannot ignore the applicability of values that live in society. In this case, the legal principle seeks to be a bridge over legal values that are usually contained in legal ideals to be applied from norms to positive legal rules or concrete legal rules. *Second,* the principle of law guides legal norms in their formation and implementation. The legal principle, in this case, guides so that the legal values embodied in the legal principle can be applied in the formation of the rule of law, especially the rule of positive law. *Third,* the legal principle is a touchstone for the applicability of written legal norms and rules. That means that if there is a discrepancy between the rules and legal norms with legal principles, the rules and legal norms become invalid. In the context of the law as a touchstone, the legal principle is essential in seeing the applicability of positive legal norms and rules.

Based on the three orientations of the legal principles above, the fairness principle in business law also has the three orientations above. *First*, the fairness principle is a reflection of the values embodied in business law so that business law and business practices in society must be based on the noble values of a nation; in this case, it must be based on the ideals of the nation's law which in Indonesia is Pancasila. *Second,* the fairness principle guides legal norms in their formation and implementation. That emphasizes that the fairness principle must guide every regulation oriented to regulate business law and business practices. *Third*, the fairness principle becomes the test stone for applying written legal norms and rules, especially in business law. This confirms that the fairness principle must be used as a touchstone in every business practice. Moreover, when in business practice, several aspects have the potential to deal with the law, the fairness principle can be a preventive measure to assess business practices related to the law.

The fairness principle is based on the view of the philosophy of justice from John Rawls.(Safira and Safala 2019) John Rawls is a Professor at Harvard University, MIT, to Cornell University

who is famous for his ideas about justice as fairness contained in a book entitled Theory of Justice. John Rawls's idea of justice as fairness is John Rawls' idea of justice as fairness becomes the philosophical basis of the fairness principle and is relevant to be applied in business law. Regarding the relevance of John Rawls's idea of justice as fairness to business law, it is necessary to put forward at least three arguments that show the three organizations of John Rawls's idea of justice as fairness relevant to business law.(Emina 2021) *First,* John Rawls's idea of justice as fairness is based on a contract-oriented philosophy on the agreement. Agreements are indeed an essential aspect of business law because business law is a specification of civil law, where agreements are essential in studying civil law. Civil law views the agreement as the most important legal act; even the agreement can be said to be the "spirit" of civil law. Based on this view, John Rawls's view of justice as fairness is relevant to business law, which is also based on agreements.

Second, justice as a fairness John Rawls puts forward the initial idea in the form of the original position. In this context, the original position is the "original" position of humans attached to the nature of equality.(Rawls 2005) This means that justice is closely related to the equality of every individual. In business law, equality is upheld; even an agreement or agreement based on equality made by the parties is binding like a law.(White 2021) This implies that John Rawls's conception of justice as fairness is relevant to the basic concepts in business law. *Third*, justice as fairness John Rawls also emphasizes the concept of the difference principle and the equal opportunity principle. This concept is interpreted as a concept that gives legitimacy to every distinction whose orientation is to give equality to everyone. The social reality that occurs in society sometimes does not make the original position static. However, under certain conditions, it is dynamic, creating a position between the strong and the weak. In the business context, the dynamics of the original position in practice in society have resulted in the emergence of the have/investor group (the rich) dealing with the poor (the poor).(Said and Nurhayati 2021) That is relevant to business practices that are indeed related to these aspects. That also emphasizes that the relevance between John Rawls's idea of justice as a fairness and business law is related to the substance of the idea of fairness put forward by John Rawls, which strongly supports the practice of business law.

In practice, the presence of the Job Creation Law and its regulations are relevant to the fairness principle, which is based on John Rawls' idea of justice as fairness. It can be proven that: *First*, John Rawls's idea of justice as fairness is based on the philosophy of agreement which in the context of business law has relevance to the principles of contract law, such as the principle of freedom of contract and the principle of proportionality in agreements. In an agreement, according to John Rawls's idea of justice as fairness, the parties have an equal and equal position. In the context of business law, the parties in the business must be placed in a balanced and equal position. In the context of Limited Liability Company, the Limited Liability Company Law, which only facilitates Limited Liability Company as a capital partnership, in fact, unable to facilitate other parties in the business who also, in reality, carry out business practices, namely MSEs. The Limited Liability Company Law initially only emphasized Limited Liability Company as a capital alliance, nullifying MSEs' role in it. This means that the Limited Liability Company Law initially denied John Rawls' idea of justice as fairness based on the agreement philosophy that every business actor has an equal position.

Second, justice as fairness John Rawls with his original position, seeks to emphasize equality between parties in the business process. The equality of the parties in the business process is emphasized by the view that business is not just a competition for profit but every effort to seek profit and pursue the welfare of as many people as possible. In practice, the negligence of the Limited Liability Company Law in facilitating MSEs related to the formation of a Limited Liability Company legal entity actually denies the idea of John Rawls' original position. In fact, the majority of business people in Indonesia are MSEs and with the non-facilitation of MSEs in the Limited Liability Company Law, there has been a denial of equality in business. The business was then dominated by investors; of course, only a handful of Indonesians became investors. In this context, the presence of the Job Creation Law which revises the Limited Liability Company Law, is appropriate, especially as an effort to confirm the original position of John Rawls.

Third, the conceptions of the difference principle and the equal opportunity principle, as proposed by John Rawls, are important concepts in business, where under certain conditions that create gaps, the role of the state is needed to restore the stability of business competition.

This conception is based on the view, "equalize the same thing and distinguish something different.". In this context, the presence of the Limited Liability Company, which reduces MSEs in forming companies, certainly has implications for the difference in position and position between Limited Liability Company as a capital alliance with MSEs. That leads to a dichotomy that gives birth to two different things. In this context, the weak party (the poor) is MSEs. Therefore, the presence of the Employment Creation Law and its implementing regulations has an orientation to provide affirmative action for MSEs to have the same opportunities as investors in establishing Limited Liability Company. That confirms that the Job Creation Law and its implementing regulations confirm efforts to strengthen and empower MSEs that have the same opportunities and opportunities as capital alliances to form individual companies.

Based on the description above, it can be concluded that the fairness principle in the regulation regarding individual companies is correct, as formulated in the Job Creation Law and its implementing regulations. In this case, the fairness principle is a crystallization of John Rawls's conception of justice as fairness. Based on John Rawls's conception of justice as fairness which was later embodied in the fairness principle, then, in fact, the presence of the Job Creation Act and its implementing regulations have fulfilled the essence of the fairness principle, namely in the form of equality of position in the business process between investors and MSEs, equal provision between investors and MSEs in establishing a Limited Liability Company legal entity, as well as efforts to provide affirmative action for MSEs to have the same opportunities as investors in establishing a Limited Liability Company that has an orientation in empowering MSEs as an effort to guarantee community welfare as mandated by the fairness principle

4. Conclusion

The existence of MSEs in the Job Creation Law and the PP of Individual Companies for MSEs is more substantial because apart from obtaining legal certainty through a corporate legal entity, they also have the orientation of various legal protections that accompany them. In addition, this has implications for the provisions and paradigms of the Limited Liability Company, which are not only based on capital. The presence of the Job Creation Law, as well as in the PP of Individual Companies for MSEs, makes Limited Liability Company constructed

as a capital partnership or partnership of work for the lower middle class. Limited Liability Company becomes inclusive, which can not only be established by middle to upper-class entrepreneurs but also by small communities from the lower middle class. The fairness principle in the regulation regarding individual companies has been correct as formulated in the Job Creation Law and its implementing regulations. In this case, the fairness principle is a crystallization of John Rawls's conception of justice as fairness. Based on John Rawls's conception of justice as fairness which was later embodied in the fairness principle, then, in fact, the presence of the Job Creation Law and its implementing regulations have fulfilled the essence of the fairness principle, namely in the form of equality of position in the business process between investors and MSEs, equal provision between investors and MSEs in establishing a Limited Liability Company legal entity, as well as efforts to provide affirmative action for MSEs to have the same opportunities as investors in establishing a Limited Liability Company that has an orientation in empowering MSEs as an effort to guarantee community welfare as mandated by the fairness principle

Refrences

Alistar (Hîrlav), Emima. 2019. "The Relation Between Law and Morality." In *Research Association For Interdisciplinary Studies*, 2–4. https://doi.org/10.2139/ssrn.3388103.

Anggreany Arief, Rizki Ramadani. 2021. "Omnibus Law Cipta Kerja Dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas." *Al Adalah* 6 (2): 110.

Arifin, Zaenal, and Muhammad Iqbal. 2020. "PERLINDUNGAN HUKUM TERHADAP MEREK YANG TERDAFTAR." *Jurnal Ius Constituendum* 5 (1): 47. https://doi.org/10.26623/jic.v5i1.2117.

CNN Indonesia. 2022. "19 Juta Pelaku UMKM Masuk Ekosistem Digital per Mei 2022." www.cnnindonesia.com.

Devita, Seventina Monda. 2021. "Dilematika Penggunaan Klausul Arbitrase Dalam Hukum Acara Indonesia Terhadap Kontrak Bisnis Internasional." *Lex Generalis* 2 (4): 345.

Disantara, Fradhana Putra, Septina Andriani Naftali, R. Yuri Andina Putra, Dwi Irmayati, and Galih Rahmawati. 2022. "Enigma Pemberantasan Korupsi Di Masa Pandemi COVID-19." *JURNAL USM LAW REVIEW* 5 (1): 61–79. https://doi.org/http://dx.doi.org/10.26623/julr.v5i1.4135.

Duke, George. 2019. "Law's Normative Point." *Law and Philosophy* 38 (1): 1–27. https://doi.org/10.1007/s10982-018-9334-8.

Efendi, A'An, and Fradhana Putra Disantara. 2022. "Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?" *Yuridika* 37 (2): 329–66. https://doi.org/https://doi.org/10.20473/ydk.v37i2.33364.

Eka N.A.M. Sihombing, Cynthia Hadita. 2022. *Penelitian Hukum*. 1st ed. Malang: Setara

Press.
Emina, Kemi Anthony. 2021. "John Rawls Concept of Person and Society: A Critique." *Pinisi* 1 (3): 77.
Harding, Andrew. 2018. "Theories of Law and Development." *Asian Journal of Social Science* 46 (4–5): 421–44. https://doi.org/10.1163/15685314-04604003.
Himma, Kenneth Einar, and Brian Bix. 2017. *Law and Morality*. Edited by Kenneth Einar Himma and Brian Bix. *Law and Morality*. Routledge. https://doi.org/10.4324/9781315092003.
Juwana, Stephanie, Gabriella Gianova Laidha, Gridanya Mega. 2020. *Sistem Dan Praktik Omnibus Law Di Berbagai Negara Dan Analisis RUU Cipta Kerja Dari Perspektif Good Legislation Making*. 1st ed. Jakarta: Indonesia Ocean Justice Initiative.
Kasih, Desak Putu Dewi. 2022. "Perseroan Perorangan Pasca UU Cipta Kerja: Perubahan Paradigma Perseroan Terbatas Sebagai Asosiasi Modal." *Arena Hukum* 15 (1): 25.
Kristianti, Dewi Sukma. 2021. "Prinsip Kebersamaan Dalam Hukum Investasi Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja: Politik Hukum Kepentingan Investasi Ataukah Kesejahteraan Masyarakat." *PAMALI: Pattimura Magister Law Review* 1 (2): 90–113. https://doi.org/10.47268/pamali.v1i2.619.
Lerman, Lisa G., Philip G. Schrag, and Robert Rubinson. 2020. *Ethical Problems in the Practice of Law*. 5th ed. New York: Wolters Kluwer Law & Business.
Marpi, Yapiter, Erlangga, Bakti Toni Endaryono, and Krismayu Noviani. 2021. "Legal Effective of Putting 'Business as Usual' Clause in Agreements." *International Journal of Criminology and Sociology* 10 (1): 58–70. https://doi.org/10.6000/1929-4409.2021.10.09.
Muhammad Faiz Aziz, Nunuk Febriananingsih. 2020. "Mewujudkan Perseroan Terbatas (PT) Bagi Usaha Mikro Kecil (UMK) Melalui Rancangan Undang-Undang Tentang Cipta Kerja." *RechtsVinding: Media Pembinaan Hukum …* 9 (1): 93.
Munandar, Mutiara Hamdalah. 2020. "Due To Covid-19 Pandemic On Indonesian Economic Defense." *Lex Scientia Law Review* 4 (1): 133–42.
Nabilah Apriani, Ridwan Wijayanto Said. 2022. "Upaya Perlindungan Hukum Terhadap Industri Usaha Mikro Kecil Dan Menengah (UMKM) Di Indonesia." *Al Azhar Indonesia* 2 (1): 29.
Nadzir A. Firdaus, Agus M. Fauzi. 2021. "Rejection Demonstration of UU Cipta Kerja Omnibus Law in Perspective Ralf Dahrendorf's Conflict Theory." *International Joint Conference on Arts and Humanities 2021* 618 (1): 1–5.
Nur Hidayat, Desi Apriani. 2021. "Hukum Pancasila Dengan Metode Penalaran Ideologi Pancasila." *Negara Hukum* 12 (1): 146.
OECD. 2021. "Effectiveness and Fairness of the Justice System." In *Government at a Glance 2021*, 49. Paris: OECD Publishing.
Oltra Gras, Ignacio. 2021. "Online Courts: Bridging the Gap Between Access and Justice." *Journal of Law and Jurisprudence* 10 (1). https://doi.org/10.14324/111.444.2052-1871.1214.

Posner, Richard. 2012. *Economic Approach to Law*. 9th ed. New York: Wolters Kluwer Law and Business.

Radith Prawira Adriadi, Shandy Aditya Pratama, Aufi Qonitatus Syahida. 2021. "Perubahan Pengaturan Pendirian Perseroan Terbatas Dalam Undang-Undang Nomor 40 Tahun 2007 Pasca Diundangkannya Undang-Undang Nomor 11 Tahun 2020." *Indonesian Notary* 3 (2): 72.

Rawls, John. 2005. *A Theory of Justice*. Cambridge: Harvard University Press.

Safira, Martha Eri, and Udin Safala. 2019. "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 (1): 131–46.

Said, M.Yasir, and Yati Nurhayati. 2021. "A Review on Rawls Theory of Justice." *International Journal of Law, Environment, and Natural Resources* 1 (1): 29–36. https://doi.org/10.51749/injurlens.v1i1.7.

Santoso, Hari Agus. 2021. "Efektifitas Undang-Undang Cipta Kerja Terhadap Peningkatan Investasi." *Jurnal Hukum Positum* 6 (2): 254–72.

Shidarta, Shidarta. 2020. "Bernard Arief Sidharta: Dari Pengembanan Hukum Teoretis Ke Pembentukan Ilmu Hukum Nasional Indonesia." *Undang: Jurnal Hukum* 3 (2): 441–76. https://doi.org/10.22437/ujh.3.2.441-476.

Sulistyawan, Aditya Yuli. 2019. "Urgensi Harmonisasi Hukum Nasional Terhadap Perkembangan Hukum Global Akibat Globalisasi." *Hukum Progresif* 7 (2): 174.

Suntoro, Agus. 2021. "Implementasi Pencapaian Secara Progresif Dalam Omnibus Law Cipta Kerja." *Jurnal HAM* 12 (1): 1–18. https://doi.org/10.30641/ham.2021.12.1-18.

Suranto, Andreas. 2020. "Modal Sosial Dan Pengelolaan Badan Usaha Milik Desa: Studi Kasus BUMDes Amarta Desa Pandowoharjo, Kabupaten Sleman, Yogyakarta." Universitas Sanata Dharma.

Suryati, Ramanata Disurya, and Layang Sardana. 2021. "Tinjauan Hukum Terhadap Omnibus Law Undang-Undang Cipta Kerja." *Jurnal Ilmiah Ilmu Hukum Simbur Cahaya* 28 (1): 97–111. https://doi.org/http://dx.doi.org/10.28946/sc.v28i2.902.

Syam, Misnar, Ismansyah Ismansyah, Busyra Azheri, and Muhammad Hasbi. 2021. "Consumer Protection Enforcement Law Characteristics on Civil Law Aspects in Indonesia." *Linguistics and Culture Review* 5 (S2): 1471–81. https://doi.org/10.21744/lingcure.v5ns2.1976.

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

White, John. 2021. "The Take-up of Rawls' Theory of the Good in Philosophy of Education." *Theory and Research in Education* 19 (3): 302.

Yuliana Duti Harahap, Budi Santoso, Mujiono Hafidh Prasetyo. 2021. "Pendirian Perseroan Terbatas Perseorangan Serta Tanggung Jawab Hukum Pemegang Saham Berdasarkan Undang-Undang Cipta Kerja." *Notarius* 14 (2): 726.

Zaid, Zaid, Farouk Aisha Dawaki, and Sabit Kazeem Ololade. 2021. "Should the State Control Tariffs?" *Journal of Governance and Public Policy* 8 (1): 22–36. https://doi.org/10.18196/jgpp.811340.