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The Principle of *Welfare rechtstaat* as a Fundamental Foundation in National Economic Development

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Abstract

Globalization has had a significant impact on the national economy, encouraging an innovative and competitive trading system. MSMEs contribute greatly to employment and increased import-export. The Indonesian government seeks to improve the quality of MSMEs through various support programs, including the establishment of the Job Creation Law. This research aims to examine the concept of the rule of law as a fundamental foundation of economic democracy and the principle of welfare reform in the growth of MSMEs, especially with regard to One Person Company. The research method used is qualitative with a normative juridical approach. The main data sources are related laws and regulations, as well as secondary legal and non-legal

materials. Data analysis is done deductively. The concept of the rule of law as the basis of economic democracy regulates society to ensure legal certainty, equality, and human rights based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In economic democracy, a populist economic system is used based on the principles of togetherness, equitable efficiency, sustainability, independence, and balance. The principle of welfare *rechtstaat* emphasizes the importance of social welfare to reduce economic inequality, with regard to the One Person Company as a new entity in the business world, according to the Job Creation Law, it is expected to be able to support the growth of an innovative and competitive investment climate.

Keywords: Influence of Globalization, Business Model, One Person Company

1. Introduction

Globalization has a major effect on aspects of the national economy, such as the realization of an open trading system. Through globalization, the world economy structurally develops following advances in science and technology so that national and international economic activities have a great opportunity for innovative and competitive market conditions, especially to increase state investment. One of the positive impacts of globalization on economic activities is the improvement and empowerment of Micro, Small, and Medium Enterprises (from now on referred to as MSMEs). The existence of MSMEs as a pillar of the national economy affects the stability of the economic sector because the dominant number of industries from all business sectors with broad employment potential has an impact on the ease of exports and imports and the increasing potential of the creative industry as long as it is balanced with a conducive business climate.

Efforts to improve the quality of MSMEs so that they can survive in the current globalization are carried out with support programs provided by the government, such as financing incentives through the People's Business Credit (KUR), marketing digitalization of MSMEs, as well as strategies to improve the class of MSMEs through the establishment of Law Number 11 of 2020 which underwent the latest amendment with Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (from now on referred to as the Job Creation Law). National economic problems in 2020 due to the crisis as a result of COVID-19 in the investment sector and decreased employment have led to changes in legal construction through the establishment of the Job Creation Law, this is because the number of regulations that are too many and overlapping is not ideal which will cause legal uncertainty because the implementation of one regulation and another becomes irregular. The Job Creation Law aims to simplify several regulations into 1 (one) law in particular so that policies or regulations can be synchronized more easily, especially to realize the improvement of a conducive investment climate and an Ease of Doing Business index with an easy licensing process.

Problems related to business actors who want to establish a business entity but have difficulty finding a "partner" or cooperation partner and limited capital have created a norm vacuum and potentially a legal loophole for company regulations,

through the Job Creation Law, the government facilitates by forming a new business entity, namely an One Person Company. MSMEs play a major role in driving the national economy because they have been able to survive the monetary crisis in 1998 and the COVID-19 conditions in 2020, so the government facilitates the One Person Company as a new business entity with limited liability (sole proprietorship with limited liability) aimed at seeking the recovery of the national economy. The norm conflict occurs between Article 109 number 1 of the Job Creation Law and Article 1 number 1 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT or LLC Law) regarding the definition of LLC, the legal construction of an One Person Company in the Job Creation Law can be interpreted that an individual legal entity is established by 1 (one) person by making a statement of establishment as long as the business activities meet the MSE criteria, while the principle of legal entity referred to in the LLC Law is established based on an agreement of 2 (two) or more people, including other legal entity principles regarding the separation of wealth (capital) and the liability of the founders of an One Person Company with 1 (one) person as a shareholder, as well as relating to the organs of an One Person Company which is one-tier because it is a single shareholder concurrently as a director without supervisors or commissioners or General Meeting of Shareholders (hereinafter referred to as GMS) as the organs of LLC referred to in the Company Law which will result in uncertainty in the principle of LLC as a legal entity.

In connection with this, a comparison is needed in the concept of running a new business entity in Indonesia, namely an One Person Company, especially the Netherlands as a country that adheres to the same legal system, namely Civil Law, as well as a country that is very influential on the formation of Indonesian regulations, because the Job Creation Law must have strong and straightforward enforceability from philosophical, sociological and juridical aspects of the urgency of enacting an One Person Company in Indonesia. Comparisons are made based on the legal system, comparison of regulations, and comparison of procedures for implementing a sole proprietorship in realizing the principle of legal expediency.

The state is an instrument of society that has the integration of political power to regulate human relations and order the phenomenon of society. Countries that experience economic growth can be recognized based on an increase in economic transactions in terms of the production of goods and services as well as exports and imports, including the adaptation of digitally integrated technology. The state as an organization of power is actively involved in regulating and supervising economic activities through the preparation and formation of laws that contain values that live in society into legal norms that are compelling to encourage the achievement of state goals, namely equal distribution of public welfare as a preventive measure of arbitrariness.

Based on previous research, namely the Determination of the Post-Recession Pancasila Economy on the Concept of Welfare State in 2022 with the result that Pancasila as the embodiment of the concept of welfare state is applied to the Pancasila economic system or a family-based populist economy, this study examines the focus of research aimed at finding the principle of welfare rechtstaat as a fundamental basis in national economic development efforts, especially MSMEs as a pillar of the national economy, especially with

regard to finding the value of the benefits of Individual Companies.¹ The study is urgently needed to comprehensively find the ideals of the rule of law in realizing the goals of a welfare state (welfare rechtstaat), especially the impact of the emergence of One Person Company entities in the Job Creation Law on improving the national economy.

2. Legal Issues

1. What is the concept of the rule of law (rechtstaat) as a fundamental foundation of economic democracy?
2. What is the principle of welfare rechtstaat in the growth of MSMEs?

3. Method

The research uses a qualitative method based on research questions to answer the principles of welfare rechtstaat as a fundamental basis in national economic development, especially with regard to MSMEs, through a normative juridical approach with a statutory approach (statute approach), historical approach (historical approach), and conceptual approach (conceptual approach), based on primary legal sources, namely laws and regulations (Job Creation Law, LLC Law, MSME Law) as well as secondary legal materials and non-legal materials, namely scientific books, scientific journals, articles or other research reports related to the research theme, and using a deductive analysis method (descriptive-qualitative).

4. Discussion

4.1 The Concept of the Rule of Law (Rechtstaat) as a Fundamental Foundation for Economic Democracy

Logemann stated that the state is an organization of power that aims to regulate the people with a compelling will.² According to Zul Afdi Ardian, the state is an organization of power that is a complementary instrument of the state to achieve certain goals.³ According to Bieren de Haan, the state is an organization formed on the unity of society because of a certain will.⁴ So, the state is an organization of power consisting of a state apparatus that organizes power to maintain legal acts and the interests of the people. The formation of the state occurs because of the will of the people, who unite based on certain thoughts to realize the goals or ideals of the state.

According to Plato, the state arises because of the needs of humans who work together to meet common needs with their tasks.⁵ Aristotle said the state arises based on human nature as a social being to achieve common goals, namely

¹ Effendi Simanjuntak, dkk. Determinasi Ekonomi Pancasila Pasca Resesi Pada Konsep Welfare State, *Jurnal Hukum in concreto*, Vol. 1, No. 1, 2022, h. 11

² Zul Ardi Ardian, Achmad Roestandi, *Tata Negara*, (Bandung: Armico, 1996), h. 12

³ Cecep Cahya Supena, "Tinjauan tentang Konsep Negara Hukum Indonesia pada Masa Sebelum dan Sesudah Amandemen Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: *Jurnal Ilmiah Ilmu Pemerintahan*, Vol. 09, No. 02, 2023, h.373

⁴ Yusril Ihza Mahendra, *Dinamika Tata Negara Indonesia*, (Jakarta: Gema Insani Press, 1996), h. 4

⁵ Riani Bakri, Murtir Jeddawi, "Analisis Indeks Negara Hukum Indonesia", *Jurnal Pallangga Praja*, Vol. 04, No. 02, 2022, h. 108

happiness, and prosperity as the goal of the state through the organization of power.⁶ According to Jean Rousseau, state power comes from the social contract theory, namely, human nature has the right to itself to be sovereign. Thus, humans, together with other humans, give sovereignty to certain human representatives as executors called governments to achieve state goals.⁷ The state is formed to organize social power so that it can be integrated with human activities (values that have lived in society) in norms to achieve national goals. A state must have constitutive and declarative elements. Constitutive elements relate to matters that must exist in the state, namely territory, population, and sovereign government, while declarative elements relate to matters complementary to the state, namely recognition from other countries.

According to Utrecht, law is a set of rules in the form of prohibitions and orders that are compelling and impose sanctions on the community for its obedience.⁸ Plato said that philosophically, humans aspire to pursue truth, decency, beauty, and justice, so the law is expected to provide welfare because it is implemented according to the will of citizens in regulating the law. The constitution is needed to compile and form norms in state life.⁹

Plato outlined the concept of the rule of law in 429 AD through his works *Politeia* (the republic), *Politicos* (the statement), and *Nomoi* (the law).¹⁰ The work *Politeia* is related to the arbitrary government of Athens, so the leaders of the country should be left to philosophers because they are wise human beings. The work *Politicos* is related to Plato's thought that the law functions as a regulator of people's behavior, so the ruler (government) knows how to make laws. The work *Nomoi* is related to Plato's thought that the legal aspect plays an important role in realizing good governance.

The concept of state law (*rechtstaat*) was developed in the 18th century and pioneered by Immanuel Kant, who spread the notion in Continental Europe. According to Seheltema, the elements of *rechtstaat* are legal certainty, equality, democracy, and government that can serve the people.¹¹ Julius Stahl states that the elements of *rechtstaat* consist of human rights, division of powers, laws and regulations prepared by the government, and free administrative courts in disputes.¹² The term state of law (*Rechtstaat*) is used in Dutch, while in English, it is called "the rule of law." The principle of the rule of law is related to *nomocracy*, which comes from the words "nomos," namely norms, and "cratos," namely power. So, the state, as an organization of power, makes law as a determinant and regulator in the administration of the state.¹³ The state of law (*rechtstaat*)

aims to organize legal order so that the implementation of state policies is in accordance with legal norms and all actions of state administration must be based on statutory regulations. The government is intended to intervene in all aspects of citizens' lives to avoid free-fight liberalism and realize equitable welfare.

The characteristic of the rule of law in Indonesia is Pancasila, which is a philosophical ideology that fulfills all aspects of state life, including the hierarchy of legislation as the source and basis of the rule of law. The concept of the Indonesian state of law based on Pancasila is the basis for the value of relations between communities, which is known from Pancasila's precepts, which are absolutely interrelated. Through Pancasila, the entire basis of government administration, the basis for changes and renewal of the constitution or legal politics must be based on Pancasila values, which are arranged hierarchically into a unity, this is also the essence in the Preamble of the 1945 Constitution of the Republic of Indonesia as the main points of the fundamental rules of the constitution in Indonesia. Pancasila in a state of the law is the ideals of law or *rechtsidee* so that it becomes the highest norm in determining the basis for the validity of applicable norms.

The rule of law and democracy are interrelated concepts because democracy is the basis for the principle of equality before the law, which is used as a reference for the state (government) in formulating the rule of law. The term democracy comes from the word "demos," which means people, and "kratos" which means government. Thus, democracy is a government where the people are the determinants of state administration. The concept of democracy was carried out in ancient Greece with direct democracy, where the people had the right to make political decisions for all the people to carry out.¹⁴ The power of government for countries that run a democracy is in the hands of the people because the people are the highest holders of power and sovereignty. In government and political systems, democracy is subject to the rule of law agreed upon by the people and must be based on basic human rights.

The concept of democracy contains the principle of sovereignty, while the concept of the rule of law contains the principle of the rule of law, which is realized in constitutional form and is called a democratic state of law or constitutional democracy. The principle of the rule of law is related to the principle of legality, all citizens have equal standing before the law, judicial bodies that are free and independent from the influence of other powers, elections, guarantees of law enforcement, protection of human rights, and prioritizing the public interest.¹⁵ In connection with this, the principle of democracy relates to political representation, political accountability, concentration of authority, supervision of government administration, transparency, and openness to the public, and the people are given the opportunity to object. Thus, a state of law must be based on a democratic system so that there is a clear reference in the constitution in realizing the sovereignty of the people through democracy the rule of law will be enforced and

⁶ Riani Bakri, *Ibid.*, h. 109

⁷ Soehino, *Ilmu Negara*, (Yogyakarta: Liberty, 1998), h. 17

⁸ Abdul R. Saliman, *Hukum Bisnis untuk Perusahaan: Teori dan Contoh Kasus*, (Jakarta: Prenadamedia Group, 2015), h. 7

⁹ Moh Kusnadi dan Bintan R Saragih, *Ilmu Negara*, (Jakarta: Gaya Media Pratama, 2008), h. 131

¹⁰ Riani Bakri, *Op.Cit.*, h. 110

¹¹ Deddy Ismatullah dan Asep A. Sahid Gatara Fh, *Ilmu Negara: Dalam Multiperspektif Kekuasaan, Masyarakat, Hukum, dan Agama*, (Bandung: Pustaka Setia, 2017), h. 166

¹² Moh Kusnadi dan Bintan R Saragih, *Op.Cit.*, h. 92

¹³ Jimly Asshidiqie, *Konstitusi & Konstitusionalisme Indonesia*, (Jakarta: Konstitusi Press, 2005), h. 52

¹⁴ Winarno, *Paradigma Baru Pendidikan Kewarganegaraan*, (Jakarta: Bumi Aksara, 2010), h. 90

¹⁵ Jimly Asshidiqie, *Menuju Negara Hukum yang Demokratis*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), h. 690

controlled based on the law (*rechtstaat*) and the realization of democratic ideas as an instrument of organizing the state. The government, as part of the organization of power, is responsible for fulfilling public welfare in a stable and sustainable economic development. The term economy comes from "oikos," which means 'household,' and "nomos," which means law. It can be seen that there is a relationship between law and economics. Jean Jacques Rousseau mentioned that the state, through a wise government, will form a common good for society's economy.¹⁶ Thus, law plays an important role in the economic development of the country, helping to realize the welfare of the people, namely stable living needs and decent income.

The populist economic system adopted by Indonesia in economic development is intended with economic sovereignty in the hands of the people based on democratic principles as in the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution of the Republic of Indonesia) Article 33 paragraph (4), namely the national economy is based on economic democracy with the principles of togetherness, equitable efficiency, sustainable, environmentally sound, independence, and maintaining balance, progress, national economic unity. The principle of togetherness is intended by the principle of kinship in using and utilizing productive natural resources, avoiding the arbitrary use of resources for the practice of corruption, collusion, and nepotism.

The principle of equitable efficiency with regard to the allocation of resources in an appropriate and balanced manner based on applicable policies, fair business competition, and cooperation between the community and government ensures fairness in national economic growth. The principle of sustainability and environmental insight relates to the management and utilization of resources solely for the benefit of increasing national economic development (sustainable development) and environmentally sound, namely paying attention to environmental maintenance (pro-environment). The principle of independence and maintaining balance, progress, and national economic unity with regard to investment is that the national economy must be independent and outward looking, this is to maintain a balance of unity in encouraging economic progress. Thus, the populist economic system is a system that drives national economic development by involving the contribution of all levels of society through the principles of economic democracy based on the fundamental ideological values of Pancasila.

Based on the juridical aspect, the principle of economic democracy in a populist economic system is found in Article 33 of the 1945 Constitution of the Republic of Indonesia as an effort to strengthen the economy both in terms of consumers, producers, and labor in a proportional and balanced manner. In connection with this, the realization of economic democracy in a populist economic system can be done by increasing opportunities for active participation at all levels of society, especially MSMEs. The government plays a role in creating an environment or climate for healthy, competitive, and innovative business competition with concrete support in the form of utilizing access to business facilities from the aspects of appropriate technology, ease of capital, and market information.

¹⁶ Jimly Asshiddique, *Konstitusi Ekonomi*, (Jakarta: Kompas, 2010), h. 11

4.2 Welfare *rechtstaat* principle in growth UMKM

The concept of welfare is, in principle, a condition of social well-being, namely a condition in which material and non-material needs are met.¹⁷ The welfare state as a state system aims to minimize economic disparities and maximize the reduction of poverty levels in society. Thus, conceptually, the state is intended as a system for organizing welfare and social services with an ideal approach so that humans get basic rights in the state. Welfare will be achieved as a planned process carried out by individuals to improve the quality of life by fulfilling social services such as health, education, housing, social services, and social security.

The welfare state emerged in the 18th century based on Jeremy Bentham's idea that the government is responsible for ensuring the welfare and happiness of the people, this became known as the theory of utility, the realization of the welfare state with regard to the role of the constitution and government policy in directing the improvement of people's happiness and welfare as much as possible.¹⁸ The concept of a formal legal state with a liberal system before the emergence of the welfare state has a narrow role, namely, the state as a night watchman (*nacht-wachter staat*) to maintain the safety of noble property and has no power to regulate community relations. So, the concept of a welfare state or material law state emerged as a reaction to the concept of a formal law state with a state system that upholds the welfare of society, the state has interference in public relations.

The English state was a milestone in the establishment of the welfare state in the year implementing Poor Law as a result of the war that caused poverty it regulated the welfare of workers (vagrants and beggars), then in 1601, during the Renaissance, Queen Elizabeth I divided Poor Law into Worthy Poor (people who are classified as not having the opportunity to get a job such as the elderly, disabled people, single parents and children then get help from the kingdom) and Unworthy Poor (people who are classified as wasting the opportunity to work such as drunkards and gamblers, who are considered not worthy of royal assistance).¹⁹ The welfare state then developed in the German state under the leadership of Otto von Bismarck in 1850. The state was responsible for regulating the relations of its people to eliminate economic inequality with the conditions of social citizenship, full democracy, a modern industrial relations system, rights to education, and the expansion of modern mass education.²⁰ Based on its history, several welfare state models are divided into 4 (four), namely:²¹

1. The universal model (the Scandinavian welfare state) states that welfare is the right of all people regardless of

¹⁷ James Midgley *et al.*, *The Handbook of Social Policy*, (London: Sage, 2000), h. 10

¹⁸ Elviandri, Khuzdaifah Dimiyati, Absori, "Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia", *Jurnal Mimbar Hukum*, Vol. 31, No. 02, 2019, 255.

¹⁹ Micftachul Huda, *Pekerjaan Sosial dan Kesejahteraan Sosial: Sebuah Pengantar*, (Yogyakarta: Pustaka Pelajar, 2009), h. 73

²⁰ V. Hadiyono, "Indonesia dalam Menjawab Konsep Negara Welfare State dan Tantangannya", *Jurnal Hukum Politik dan Kekuasaan*, Vol.1, No. 1, 2020, h. 24

²¹ V. Hadiyono, *Ibid*, h. 26

- economic inequality. This model is applied in Finland, Norway, Denmark, and Sweden.
2. Germany and Austria apply the corporate model, in which welfare is realized based on contributions from the government, businesses, and workers in an insurance scheme.
 3. The Residual Model, in which welfare is given primarily to worthy poor groups on a temporary and strict basis so that the allocation is carried out effectively and efficiently, but if the state feels that it has enough, it will be dismissed, this model is applied in the United Kingdom, the United States, Australia, and New Zealand.
 4. The minimal model, where welfare is realized in the allocation of government budgets in state development in a minimal and temporal manner, is applied in Brazil, Spain, Chile, Italy, the Philippines, Sri Lanka, South Korea, and Indonesia.

Bagir Manan argues that the concept of a welfare law state relates to the state as a security guard and bearer of responsibility for the realization of social justice, general welfare, and the greatest prosperity of the people.²² Espring-Andersen states that a welfare state means that the state plays an active role and is responsible for regulating the economy to ensure the welfare of the people.²³ According to Mac Iver, the welfare law state (welfare rechtstaat) prioritizes the guarantee of human rights, the role of the executive is greater than the role of the legislature, property rights are not absolute, the state maintains social and economic order and security, the role of public law is more important and urges the role of private law because of the wider role of the state in regulating social, economic and cultural, and the nature of the material law state prioritizes social justice.²⁴ Welfare rechtstaat (welfare law state) is a state that plays an active role in all aspects of people's lives by providing minimum standards to ensure welfare for the people, in this case, food, health, income, housing, and education.

Indonesia as a welfare rechtstaat plays an active role in the economy the preamble of the 1945 Constitution of the Republic of Indonesia contains the phrase "just and prosperous" as well as "general welfare and social justice", this is also known based on the 5th (fifth) Pancasila principle, namely social justice for all Indonesian people. With regard to the national economy, Article 33 of the 1945 Constitution is the basis for the constitution that the economy must be treated based on the principle of kinship with fair treatment so that welfare can be achieved with the greatest prosperity of the people in utilizing the advantages of natural resources. The principle of welfare rechtstaat is referred to in the 1945 Constitution and Pancasila with regard to a prosperous social security system and economic development based on productive resources, including the fulfillment of human rights such as health, education, and human resources with broad employment opportunities.

²² Elviandri, et. al., *Op.Cit.*, h. 259

²³ Darmawan Tribowo dan Sugeng Bahagijo, *Mimpi Negara Kesejahteraan* (Jakarta: Pustaka LP3ES Indonesia, 2006), h. 9

²⁴ Mac Iver, *The Modern State*, (London:Oxford University Press,1950), h.4

In connection with this, welfare rechtstaat as the goal of the state based on Pancasila and the 1945 Constitution of the Republic of Indonesia can be known by the fulfillment of the basic rights of citizens, the social security system as a welfare program, as well as strengthening fiscal capacity for responsive government in controlling and managing natural resources that are important for citizens. In addition, the government plays an important role in economic growth policy strategies that are fair, inclusive, sustainable, and oriented towards equitable welfare. The relevance of welfare reform to the global economic context relates to the important role of the state in realizing social and economic stability to minimize economic disparities by formulating economic policies that provide legal certainty and benefits for citizens. The concept of welfare rechtstaat in implementation, especially in MSMEs, can experience certain challenges for business actors, such as limited access to capital, lack of infrastructure and technology, complicated regulations, and limited market access.

The government, in realizing the objectives of the welfare rechtstaat state as the ideal of the rule of law, can be done by providing adequate facilities and infrastructure (encouraging market digitalization as an innovation for MSMEs), providing incentives for MSME capital, including coaching, training, and supervision programs for business actors on a regular and ongoing basis to increase business innovation with cooperation, simplifying and facilitating the business licensing process in digital economic policies (transparent, easy access) including protection for business actors and fair and fast dispute resolution, as well as developing and directing resources in various regions to ensure equitable national economic development that is fair, inclusive, and sustainable.

Since the enactment of the Job Creation Law, an One Person Company has been one of the interesting business options that business actors can carry out. The trend of the One Person Company business model can then encourage the government to regulate and supervise information disclosure effectively, which has an impact on regular tax payments because individuals carry it out. The governance and establishment of an One Person Company are simpler and easier, and they encourage people to increase new business opportunities that will absorb labor and grow the national economy. This also has an impact on business actors; for example, there is no need for nominees to avoid shareholder conflicts as in the organ structure of a LLC because the One Person Company has full control over the running of the company. An One Person Company, which is the sole shareholder, will find it easier to make decisions.

The requirements for the establishment of an One Person Company in Article 6 and Article 7 of the Job Creation Law are that the establishment is carried out by Indonesian Citizens (WNI) at least 17 (seventeen) years old and legally capable, making a statement of establishment in Indonesian which is then registered electronically through Legal Entity Administration System (LEAS/SABH) to obtain authorization from the Ministry of Law and Human Rights in the form of proof of registration and certificate of legal entity status of the One Person Company. This is regarding the name and domicile of the One Person Company; the period of establishment and the purpose and objectives of the One Person Company's business activities; the amount of authorized capital, issued capital, and paid-up capital in the One Person Company; the nominal number of shares;

the domicile address of the One Person Company, the identity of the founder of the One Person Company in full because he is both a director and a shareholder.

According to Article 3 of Government Regulation No. 8 of 2021 on the Company's Authorized Capital as well as Registration of Establishment, Amendment, and Dissolution of Companies that meet the Criteria for Micro and Small Enterprises (from now on referred to as Government Regulation No. 8 of 2021), the amount of authorized capital of an One Person Company depends on the decision of the founders, while the issued capital and paid-up capital is at least 25% (twenty-five percent), then the proof of deposit is submitted electronically a maximum of 60 (sixty) days from the date of filling out the statement of establishment of the One Person Company. The amount of the authorized capital value of an One Person Company has no minimum provisions and is left entirely to the founder, provided that the business activities carried out are included in the criteria as Micro and Small Enterprises as stipulated in Government Regulation Number 8 of 2021. In connection with this, the positive side is that business actors can more easily establish an One Person Company without being constrained by the authorized capital, although there is still issued capital and paid-up capital as the principle of LLC, namely the separation of personal and company assets. However, on the negative side, the absence of a minimum capital requirement in an One Person Company cannot assure third parties that the One Person Company can make payments, so third parties do not have legal protection.

The process of establishing an One Person Company that is carried out by filling out a statement of establishment without requiring a Notary deed as in Article 109 number 5 of the Job Creation Law in conjunction with Article 153A does not guarantee that the legality of the document is legally valid because it will be easier to override or the possibility of fraud risk, especially related to the suitability of the identity of the founder and the business activities of the One Person Company, this is a risk of illegal acts and legal uncertainty. The basic concept of LLC in an One Person Company also deviates because the Notarial deed with a minimum of 2 (people) to establish a LLC is intended so that the parties can supervise each other and carry out a check and balance function when making decisions for the LLC, while the One Person Company consists of founders who concurrently serve as all LLC organs because the One Person Company is a one-man-company. The provision of financial statements, as in Article 78 paragraph (2) of the Company Law, is an agenda in the GMS every 6 (6) months after the financial year ends, the same applies in an One Person Company as in Article 153 F paragraph (1) and paragraph (2) of the Job Creation Law in conjunction with Article 10 of PP No. 8 of 2021, namely that financial reports must be made at least 6 (six) months after the end of the current accounting period electronically by submitting a profit and loss statement, financial position, and notes to the current year's report, if not done then the One Person Company will receive a written warning, termination of access to Ministry services, or revocation of legal entity.

Furthermore, the principle of liability of an One Person Company is still implemented using limited liability (sole proprietorship with limited liability), meaning that the founder, management, and shareholders are only responsible for the shares owned in the company. However, the principle of piercing the corporate veil is also applied,

meaning that the initially limited liability will become unlimited liability up to personal wealth if there is a violation, error, or negligence in running the company as referred to in Article 153 of the Job Creation Law, namely actions in bad faith, negligent, careless or doing actions that are not in accordance with the interests of the company which result in company losses. The liability of the management of an One Person Company depends on whether the loss arises due to the actions of the founder then the company can be held accountable to the extent of the shares owned, but this is also a risk because the mixing of assets in an One Person Company will be difficult to supervise because there is no supervisory function as the authority of the Board of Commissioners in a LLC, so it is based on economic considerations and family considerations.

Hasbullah F. Sjawie states that a company is an institution established based on an agreement, so shareholders can consist of 1 (one) person, called a sole corporation.²⁵ The concept of establishing a LLC with 1 (one) shareholder actually does not deviate and has been stated in Article 7 paragraph (5) of the LLC Law related to the establishment of State-Owned Enterprises and Regional-Owned Enterprises so that the sole corporation is an expansion and adaptation of the Company Law. Thus, a company established by 1 (one) person can occur when compared to other countries that have implemented a sole corporation because the sole corporation form is a legal entity of capital alliance as long as the provision that the capital must be separate has been fulfilled. Individual companies, when associated with sole proprietorship and sole trader in common law system countries, have differences namely, the One Person Company is categorized as an unincorporated business entity, so it does not have a separation of personal and corporate assets, while in Indonesia, the One Person Company is included in a legal entity with limited liability so that it is a new form of business entity in the business world in Indonesia.²⁶

Regulations regarding individual companies in the Nieuw Burgerlijk Wetboek (NBW) applicable in the Netherlands are included in Book 2 (two), namely Legal Persons. Types of legal entity companies in the Netherlands are divided into 2 (two) namely *Naamloze Vennootschap* (NV) (public limited company) and *Besloten Vennootschap* (BV) (limited private company) while non-legal entity companies are divided into 4 (four) namely *Sole Proprietorship*, *Vennootschap onder Firm* (VoF), *Commanditaire Vennootschap* (CV), and *Maatschap* (Professional Partnership).²⁷ NV can be equated to an open-ended company, BV to a closed-ended company, *Sole Proprietorship* to an One Person Company, VoF to a firm, and *maatschap* to a civil partnership.

Article 5, Letter B of the Dutch Business Registration Act states that an One Person Company must be registered. The

²⁵ Hasbullah F Sjawie, *Direksi Perseroan Terbatas serta Pertanggungjawaban Pidana Korporasi*, (Jakarta: Prenada Media, 2017), h. 92

²⁶ Imastian Chairandy Siregar, dkk. Tanggung Jawab dan Tata Kelola Perseroan Perorangan sebagai Badan Hukum Baru di Indonesia, *Journal of Academic Literature Review*, Vol. 01, No. 01, 2022, h. 29

²⁷ <https://mhrpartner.com/en/starting-a-company-in-netherlands/> diakses pada tanggal 20 Maret 2024, pukul 16.00 WIB

One Person Company in the Netherlands is referred to as Eenmanszaak or sole proprietorship, which means one-man-business, i.e., an unincorporated business entity, in contrast to Indonesia, which recognizes the One Person Company as an incorporated business entity. A Dutch One Person Company can be established without a Notarial deed, but it is required to be registered through the Trade Registry by filling out the registration form for the establishment of a sole proprietorship at the Chamber of Commerce (from now on, KvK) digitally, after which visiting the KvK office personally as a process of completing the registration and ratification of the establishment of an One Person Company, this office can be located anywhere for example at the Dutch Chamber of Commerce KvK Amsterdam, Apeldoorn, Rotterdam, Hague, Utrecht, and other places according to the domicile of the applicant. Then, data verification will be carried out in the case of registration of the establishment of an One Person Company by checking the identity of the applicant such as passport, driver's license, and Dutch identity card, other supporting documents such as data that has been entered in the registration form and business activity statement, if verified, then the applicant can pay the registration fee including tax obligations and get approval of the One Person Company establishment form so that it can be recorded in the Dutch Business Register (Dutch Business Register) managed by KvK.²⁸

Each business actor can only establish 1 (one) ownership of an individual business activity, although it can have several different business names.²⁹ An One Person Company is included in the category of unincorporated business entities, so there is no separation of the founder's assets from the company's assets, the founder is fully responsible for all legal actions carried out on behalf of the company. It is intended that the founder is fully responsible for the personal property in the event of a loss in the company. Eenmanszaak can change a business entity by changing its status from one-man-business or sole proprietorship to BV, i.e., the establishment of BV first, then the assets of the One Person Company are transferred to BV through an agreement before a Notary. Individual companies in the Netherlands have qualifications that are different from those in Indonesia, and they must meet the criteria of MSMEs.

An One Person Company as an independent legal subject can increase the trust of business partners rather than individual companies because an One Person Company is obliged to comply with regulations and disclose important information to the public, and business partners can access company information before deciding to partner with an One Person Company. Broader market access allows individual companies to be able to access the global market so that business actors are also encouraged to innovate products and services in an effort to compete competitively, this means that business actors can respond more quickly to market demand because the scope of the company is smaller and flexible, including cost management can be done effectively and efficiently. The concept of an One Person

Company owned by business actors also has an impact on the confidentiality of company information, which is kept more private, in contrast to a LLC, which requires a more complex structure for safeguarding company information.

However, the One Person Company also has negative effects, such as limited resources due to intense competition between individual companies and LLCs in general, thus requiring greater business opportunities. This will also limit the growth of the company in terms of business expansion. Limited capital is also an obstacle because banks and investors may not necessarily approve the offer of an One Person Company because the level of risk of companies run by individuals is higher, this is also related to the risk of company sustainability, which is vulnerable to changes in the conditions and personal situation of business actors, because management in an One Person Company has a high level of difficulty and responsibility from operational, administrative, strategic aspects, all borne by individuals. In addition, the naming of an One Person Company is also limited because it must include a Limited Liability Company in the name chosen in the establishment administration process, the imposition of formation costs and ongoing costs such as annual reports and taxes if borne by the business actors themselves will be a large nominal. An One Person Company is obliged to comply with laws and regulations, including making periodic reports on the operation of its company as is done by a LLC, if it fails to make periodic reports, then the One Person Company will be dissolved.

The legal system of the legal concept of an One Person Company in the Netherlands is very different from the concept of an Indonesian One Person Company, the application in Indonesia and the Netherlands is motivated by the tradition, history, and technological development of each country because it will affect the validity, stability, and behavior of society. The legal products of the modern legal system (in this case, the Job Creation Law and NBW) must reach all social phenomena in complex community problems, so it is necessary to prioritize responsive legal formation in order to create an orderly legal culture in society in the face of social change without harming the norms that apply in society. The legal structure must be consistently guided by the philosophical values adopted by the state (in this case, Pancasila and the 1945 Constitution of the Republic of Indonesia for Indonesia and the Constitution for the Netherlands) in order to create legal products that accommodate the aspirations of the community.

The concept of Economic Analysis of Law in relation to individual companies consists of 7 (seven) concepts. First, regarding rationality, individual companies are a new entity in the business world intended to improve the investment climate and ease of doing business (Doing Business) through the Job Creation Law and principles that make it easier for MSME business actors. Second, regarding the choice of business entity form, business actors mostly use unincorporated business entities such as CV or Firm rather than LLC because the process is complicated, with the emergence of an One Person Company, MSME business actors can more easily carry out their business activities. Third, ease of use for MSME businesses is important in the field of investment; the purpose of an One Person Company is to realize economic activities that are conducive, competitive, and innovative. Fourth, an One Person Company is an efficient form of business entity because of

²⁸ <https://www.kvk.nl/english/registration/registering-a-limited-partnership-cv/> diakses pada tanggal 20 Maret 2024 pukul 17.09 WIB

²⁹ Khrisna Adjie Laksana, Tjhong Sendrawan, Perbandingan Perkembangan pendirian Perseroan Terbatas di Indonesia dan Belanda, *Jurnal USM Law Review*, Vol. 06, No. 03, 2023, h. 1349.

the ease of not having to look for cooperation partners and easy electronic registration of establishment. Fifth, an One Person Company can efficiently provide benefits for business actors because it contributes to opening employment opportunities and increasing consumer attractiveness. Sixth, an One Person Company is one of the strategies of state institutions (government) in increasing national economic growth. Seventh, the ease of establishing an One Person Company without a Notary deed but a statement of establishment that has been facilitated electronically so that business actors are more practical in establishing business entities and carrying out their business activities.

The position of the One Person Company in the principle of utilitarianism as a new business model in the business world is in line with the concept of Economic Analysis of Law, based on Bentham's thinking as a philosophical basis for moral values and individual happiness (the owner of the One Person Company), although indeed the interests of society are also still considered as Mill's principle so that in achieving the goal of individual happiness referred to by Bentham there needs to be a limit. Pierson mentions that welfare can be measured based on the existence of social welfare, economic welfare, and state welfare.³⁰ The measure of welfare according to Bentham, namely the greatest happiness for the greatest number, can be intended that with the emergence of the legal entity One Person Company in the Job Creation Law, it is hoped that business actors can benefit so as to realize general and equitable welfare in the economic field. The concept of Economic Analysis of Law states that a rule must be able to provide benefits to society, in a rational concept, the One Person Company policy is aimed at MSME business actors and growing the national economy through legislation to facilitate business actors in doing business that is electronically integrated through administrative digitization.

A responsive government as an agent of development, control, and management of natural resources will become a pillar of enforcement and a driver of fair and sustainable economic growth. Sustainable economic development is the concept of economic, social, and environmental development with regard to social welfare, welfare is the main goal of development, so the economy of each generation must be better, and the adverse effects on the previous generation can be reduced. An inclusive and equitable economy must be oriented towards equality and equal control of production owned by individuals so that national economic development can be realized not only based on rule-driven but also mission-driven. The populist economic system as a form of economic democracy for national economic development is able to realize the country's goal of welfare by empowering an independent economy that is participatory and equitable in various regions. The government, through the Job Creation Law, plays a role in providing regulatory certainty that protects business actors, especially with the impact of the emergence of individual companies as new entities in the business world.

³⁰ Muhammad Amiril A'la dan Aditya Prastian Supriyadi, Omnibus Law sebagai Reformasi Hukum Investasi di Indonesia Berdasarkan Asas Hirarki Peraturan Perundang-Undangan, *Al-Huququ: Journal of Indonesian Islamic Economic Law*, Vol 2, No. 2, 2020, h. 148

5. Conclusion

The government plays an important role in realizing the goals of the state (welfare *rechstaat*) with economic democracy through a populist economic system based on the values in Pancasila and the 1945 Constitution of the Republic of Indonesia, which can be done by opening wider community participation as a driving force in the business world, in this case, MSMEs, especially Individual Companies as a new entity in the business world which is expected to foster a healthy, competitive and innovative investment climate and business competition so as to realize equal public welfare in national economic development.

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