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Legal Certainty of the Meaning of the Parties' Agreement on the Authorized Capital of a Limited Liability Company

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ABSTRACT
The impact of changing the amount of PT capital to an agreement between the parties has led to a lack of legal certainty for the involved parties. A significant legal conflict exists between Article 32 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies and Article 109 paragraph (1) of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation. The changes allow the amount of PT capital to be determined based on the agreement of the company's founders, leading to ambiguity in legal certainty. This research aims to examine and analyze the legal consequences of these regulations on the basic capital requirements for Limited Liability Companies in Indonesia, and to assess the legal certainty surrounding the agreement between parties regarding PT capital. The research employs a normative juridical method, utilizing statutory, comparative, and conceptual approaches. The analysis is grounded in the Theory of Legal Certainty (Grand Theory), Development Law Theory (Middle Range Theory), and the Theory of Good Corporate Governance (Applied Theory). The research found that changes in the regulation of basic capital, following the enactment of Law No. 6 of 2023, have contributed to legal uncertainty. This study aims to provide legal clarity on the consequences of these regulatory changes and their impact on corporate governance and legal compliance in Indonesia.

Introduction

The Commercial Law Code (KUHD) is a concrete step by the government in creating business activities that are in accordance with the legal corridor. Regarding PT, the Government made a law that specifically regulates this matter, namely Law Number 1 of 1995 concerning PT ("UUPT 1995") which was later amended to UUPT 2007 (Pramono, 2012). The heart of these business activities, especially in universities based on the articles of association. Material requirements in the form of capital and

completeness of documents that must be submitted to the Notary at the time of signing the deed of establishment (Hernoko, 2016).

Article 7 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies "A company is established by 2 (two) or more persons with a notary deed made in Indonesian". A Limited Liability Company (PT) is established by: (1) the principle of agreement; (2) joint ventures with authorized capital, all of which are divided into shares, which must meet the requirements of the law (Satrio, 2015).

The establishment of a business entity in the form of a PT can be carried out by one person as a Shareholder as well as a Director as has been inaugurated Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (called the Job Creation Law). This of course greatly supports the ease of business actors in building their businesses (Yani & Widjajanto, 2023).

Based on Article 8 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies "The deed of establishment contains the articles of association and other information related to the establishment of the Company", the legality of a company or business entity is the most important element, because legality is the identity that legalizes or authorizes a business entity, so that it is recognized by the public. In other words, the legality of a company must be legal according to laws and regulations, where the company is protected or covered with various documents until it is legal in the eyes of the law (Harahap, 2021).

PT is a Legal Entity which is a capital partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares, and meets the requirements applied in the law. The Company must have objectives and objectives as well as business activities that do not conflict with the provisions of laws and regulations, public order, and/or morality (Budiono, 2012).

In establishing a PT, it requires authorized capital that must be fulfilled by the company's founders. The regulation of authorized capital in Indonesia is regulated in Law Number 40 of 2007 concerning Limited Liability Companies (UUPT 2007), which has been amended into Government Regulation Number 29 of 2016 concerning Changes in the Authorized Capital of Universities (hereinafter referred to as Government Regulation Number 29 of 2016) and the Job Creation Law (Pangesti, 2021). Article 32 paragraph (1) of the 2007 UUPT states that: "The Company's authorized capital is at least Rp 50,000,000,- (fifty million rupiah)". Since the Job Creation Law came into effect, there is no provision for a minimum authorized capital for the establishment of a capital partnership company. The authorized capital for the establishment of a PT depends on the decision of its founders (Article 32 paragraph (2) of the Job Creation Law). The enactment of the Job Creation Law has caused a polemic in the community regarding the conflict of norms in Article 32 paragraph (1) of the 2007 Law and the Job Creation Law (Siregar et al., 2022).

Then Article 33 paragraph (1) of the 2007 UUPT states that the company's capital at the time of establishment of the company must meet the Limited, namely 25% (twenty-five percent) of the issued and fully paid-up capital of the company's authorized capital (Ville, 1999). The deed of establishment of the Company that does not comply with Article 33 paragraph (1) of the 2007 Constitution which has legal consequences from the deed of establishment of the Company that does not comply with Article 33 paragraph (1) of the 2007 Constitution has resulted in a business dispute in it (Sinaga, 2018). Formally, a PT is a legal entity that is a capital partnership. Juridically, it means four

important things, namely: 1. The Company is a legal entity; 2. The Company is established based on an agreement; 3. There is an authorized capital of the company; and 4. The establishment of the company must be submitted to the Minister of Law and Human Rights (Irfani, 2020).

The Job Creation Law, which regulates the amount of authorized capital of a PT, is determined based on the agreement of the founders of the PT, resulting in a lack of clear legal certainty regarding the minimum limit of the authorized capital of a PT. Article 32 paragraph (2) of the 2007 UUPT regulates that changes can be made regarding a certain business field regulated by law or Implementing Regulations (Manurung, 2016). The application of the formation of laws or laws and regulations must meet 3 (three) elements of legal goals or ideals, according to Gustav Radbruch in idee des recht regarding 3 (three) elements of legal goals or ideals that must exist, namely legal certainty (rechtssicherkeit), justice (gerechtigkeit), and usefulness (zweckmasigkeit)). The enactment of the Job Creation Law, which regulates the amount of authorized capital of a PT, is determined based on the agreement of the founders of the PT, which can have both positive and negative implications. If it is associated with the enactment of the Job Creation Law, the Government can indirectly explain that the enactment of the regulation prioritizes one of the three legal purposes (Fahham, 2011).

This conflict of norms creates legal uncertainty for people who want to establish a PT related to the Minimum Basic Capital of a PT and the unclear description of fields with specific provisions (Sidabalok, 2012). Norm conflicts can be resolved using the principle of legal preference, namely the principle of lex superior derogat legi inferiori. The conflict of norms between Article 32 paragraph (1) of the 2007 UUPT and the Job Creation Law on Changes in the Authorized Capital of PT when using the principle of lex superior derogat legi inferiori which principle means that higher regulations negate the applicability of lower regulations (Rizqi & Yusuf, 2019).

Regarding the regulation regarding the establishment of PT in the form of Micro and Small businesses as regulated in the Job Creation Law, precisely in Article 109 paragraph (1), which states that:

"PT, hereinafter referred to as the Company, is a legal entity that is a capital partnership, established based on an agreement, carrying out business activities with authorized capital that is entirely divided into shares or an individual legal entity that meets the criteria for Micro and Small Enterprises as regulated in the legislation regarding micro or small businesses". Then Article 153 A paragraph (1) states "A company that meets the criteria for micro and small businesses can be established by 1 (one) person", then in paragraph (2) it states "The establishment of a company for micro and small businesses as referred to in paragraph (1) is sufficient to be made in the form of a statement letter".

Correcting and straightening the meaning of the provisions of Article 109 paragraph (1) Jo Article 153 A, paragraph (1) and paragraph (2) No. 11 of 2020 concerning Job Creation, new regulations regarding the establishment of Legal Entities of Micro and Small companies that can be established by only 1 (one) person while some regulations related to the establishment of the Company itself still refer to the general principles regarding the Agreement as stipulated in Article 1 number 1 Jo Article 7 paragraph (1) and paragraph (2) of the 2007 Constitution. It is important to note that the implementation of several new provisions in the Job Creation Law does not automatically abolish the enforcement of other sectoral laws that previously existed, including the enactment of Law No. 40 of 2007, especially regarding the Establishment of PT. Because the regulation

of PT in the Job Creation Law only adds new regulations regarding the Establishment of PT.

The legal conflict between Article 32 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies and Article 109 paragraph (1) of Law Number 6 of 2023 regarding the determination of authorized capital based on the agreement of the parties has not been sufficiently explored, particularly in how it impacts legal certainty. While existing studies have discussed the importance of authorized capital in company formation, there is a lack of in-depth analysis on the implications of this shift on corporate governance, stakeholder protection, and the legal certainty of third-party agreements.

The shift in regulation allowing the authorized capital to be determined by the agreement of the parties has created significant legal uncertainty, which may affect business stability, the protection of third-party interests, and the overall legal framework of corporate governance in Indonesia. This change is critical to address as it impacts the confidence of investors, creditors, and other stakeholders, particularly in an environment where corporate legal certainty is essential for economic growth and business sustainability.

This study offers a fresh perspective on the implications of allowing the agreement of the parties to dictate the authorized capital in Limited Liability Companies. Unlike previous research, this dissertation will specifically address how the absence of a clear minimum capital requirement influences legal certainty, corporate governance, and the broader business environment. The research introduces an analysis of how legal theory, such as the theory of legal certainty and good corporate governance, can be applied to resolve conflicts in current legislation.

The objectives of this research are to examine and analyze the legal consequences of the implementation of regulations concerning authorized capital in Limited Liability Companies in Indonesia, particularly following the enactment of Law No. 6 of 2023, to assess the level of legal certainty in agreements between the parties regarding the determination of authorized capital, and to propose solutions for aligning corporate governance with the current legal framework to ensure stakeholder protection and business continuity.

This research will contribute to the legal literature by offering practical insights for policymakers on resolving legal conflicts related to authorized capital, providing clarity for business owners, investors, and legal practitioners on navigating the current legal environment with respect to corporate capital requirements, and strengthening the legal framework of corporate governance by proposing amendments to ensure legal certainty and stakeholder protection, thereby supporting sustainable business development in Indonesia.

Research Methods

This type of research is a normative juridical that is descriptive analytical with a legislative approach, a conceptual approach, a philosophical approach, and a comparative legal approach. The research data is sourced from primary, secondary and tertiary legal materials, namely the Constitution of the Republic of Indonesia 1945 (IV amendment), the Civil Code, Law Number 40 of 2007 concerning PT, Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 29 of 2016 concerning Changes in the Authorized Capital of PT, Law Number 6 of 2023 concerning the

Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation.

Results and Discussions

Legal Consequences of the Implementation of Changes in the Arrangement of the Authorized Capital of Limited Liability Companies in Indonesia

Limited Liability Companies have been present and known in Indonesia for a long time, this is evidenced by the fact that since 1848, Indonesia has used and enforced the provisions for the establishment of Limited Liability Companies (hereinafter referred to as PT or Limited Liability Companies), as stipulated in the Commercial Code (KUHD). The juridical foundations of PT have been regulated in the Criminal Code through Articles 36 to 56 of the Criminal Code which are sourced and adapted from the Netherlands which uses *Wetboek van Koophandel*. PT in Netherlands is called *N.V* and/or *Naamloze Vennotschap*, and in United Kingdom it is called *company limited by shares.*

In the period before the enactment of the 1995 UUPT, PT was established with general rules based on the Commercial Law Code (KUHD). Article 36 of the Criminal Code states "A company is each partnership established to run a company with capital consisting of sero-sero, which the pesero or sero holders are only responsible for limited to the full amount of sero-sero they have." This article explains that a PT is established with capital divided into shares (sero-sero), and that the responsibility of the shareholders is limited to the amount of capital they deposit in the form of shares. Article 37 of the Criminal Code states that "PT has its own wealth which is separate from the wealth of its founders and is responsible only for the amount of capital that has been paid". This implicitly indicates that a PT was established based on an agreement between its founders to deposit capital in the form of shares.

Furthermore, Article 40 of the Criminal Code states that "The company's capital is divided into shares or sero-sero in the name or blank" and there is no standard provision regarding the minimum authorized capital. The Criminal Code does not explicitly regulate the minimum authorized capital for the establishment of PT. However, the Criminal Code provides a legal basis for the establishment of a business entity in the form of PT. This can lead to legal uncertainty regarding protections for third parties and the credibility of the company.

The birth of Law Number 1 of 1995 concerning Limited Liability Companies (UUPT 1995) is a response to the need to provide a clearer and more modern legal framework for the regulation of Limited Liability Companies in Indonesia. The 1995 Constitution is designed to provide clearer legal protections for shareholders and creditors, including rules on limited liability of shareholders. The 1995 Law adopts several internationally recognized principles in corporate law, such as the protection of minority shareholders and good corporate governance standards. Legal reform through the birth of the 1995 Constitution is part of a broader national legal reform agenda to update various aspects of the law that are considered irrelevant to the times. The 1995 Constitution introduced a more transparent and accountable mechanism in the management of universities, including the obligation to make financial statements and a supervisory mechanism by the board of commissioners.

In terms of regulating the minimum capital of the 1995 UUPT, Article 25 of the 1995 UUPT states that the company's minimum authorized capital is Rp 20,000,000 (twenty million rupiah). According to Article 26 of the 1995 UUPT, it is stipulated that at the time of the establishment of the company, at least 25% (twenty-five percent) of the

authorized capital must be placed and fully paid. The process of establishing a PT is required through the preparation of a deed of incorporation in front of a notary, which is then ratified by the Ministry of Law and Human Rights (Kemenkumham) and proof of capital deposit of at least 25% (twenty-five percent) of the authorized capital must be present, which is usually evidenced by depositing capital into a bank account in the name of the newly established PT.

Judging from the feasibility of business, the minimum capital according to the 1995 Law of Rp 20,000,000 (twenty million rupiah) is considered quite low and aims to make it easier for entrepreneurs to establish PT. For small-scale businesses, this amount is sufficient to start operations, but for larger businesses or those that require significant investment, this amount is not enough to cover initial and operational capital needs. The 1995 Constitution provides a clear legal framework for the establishment and operation of PT. It includes provisions on capital, shareholder responsibilities, and administrative obligations. With a minimum set capital and a limit of shareholder liability that is limited to the paid-up capital, there is legal certainty that protects shareholders from liabilities that exceed their investment.

The minimum capital provision according to the 1995 Constitution can run well as long as there is compliance with the established procedures and a good understanding of the legal requirements. The feasibility of a business depends largely on the type and scale of the business to be run. While a minimum set capital may be sufficient for a small-scale business, larger businesses require more thorough financial planning. The 1995 Constitution in Indonesia has several weaknesses that cause the need for changes and improvements through the 2007 Constitution. Some of these weaknesses include:1. lack of adequate protection for minority shareholders, the responsibilities of directors and commissioners are unclear, especially related to personal liability for corporate losses resulting from careless or unlawful acts, 2. the liquidation and bankruptcy process regulated in the old law is considered inefficient and time-consuming, 3. The 1995 Constitution has not fully accommodated the principles of good corporate governance, such as transparency, 4. accountability, and corporate social responsibility, 5. The 1995 Constitution is not responsive enough to changes in the global business and economic environment, 6. administrative procedures regulated in the 1995 Constitution are considered too complicated and bureaucratic.

As an effort by the government to update and simplify legal provisions to be more relevant to economic development and the needs of the business world, it is felt necessary to amend the 1995 Constitution to the 2007 Constitution. Then, President Susilo Bambang Yudhoyono on August 16, 2007 has ratified and promulgated the Limited Liability Company Law of 2007 which amends and replaces the regulations of the Limited Liability Company Law of 1995. The Limited Liability Company Law Number 40 of 2007 provides for the addition of new rules and improvements to the rules, or re-pouring the old provisions that are still relevant from the Limited Liability Company Law of 1995, such as regarding the affirmation that the Company is a legal entity consisting of a capital partnership on the basis of an agreement from at least 2 (two) parties, in order to carry out business activities with the provision of a minimum authorized capital of at least Rp 50,000,000,- (fifty million rupiah), which is divided into shares issued to shareholders.

Article 31 paragraph (1) of the UUPT emphasizes that the authorized capital of a PT consists of the entire nominal value of shares. The word capital (*capital*) when associated with PT contains the meaning, something that PT obtains in the form of money through the issuance of shares (*Issued of shares*). Article 32 paragraph (2) opens the

possibility of setting a minimum amount of authorized capital of a PT greater than IDR 50,000,000 (fifty million rupiah). The possibility is open to PTs that carry out certain business activities provided that it is specified in the law that regulates that particular business activity. According to the explanation of Article 32 paragraph (2) of the 2007 UUPT, certain business activities include banking, insurance, or *freight/forwording*.

Law Number 40 of 2007 concerning Limited Liability Companies (UUPT) is the main legal basis for companies in Indonesia. One of the important aspects regulated in this Law is regarding the minimum capital required to establish a PT. The determination of minimum capital aims to ensure that the company has enough financial resources to start and run its operations. However, the minimum capital stipulated in the UUPT (before the latest changes) is often considered too low for some types of businesses, especially those that require significant initial investment. The UUPT provides legal certainty by clearly regulating the rights and obligations of shareholders. With minimal capital, it is hoped that shareholders have confidence that the company has sufficient financial basis to operate and fulfill its obligations. The existence of minimal capital can also serve as an initial guarantee for a third party that the company has the financial capacity to cover part of its obligations, reducing the risk of *default*.

In practice, the government and relevant authorities often evaluate this minimum capital policy to adjust it to economic development and industrial needs. Adjustments to minimum capital can have a significant impact on the ease of doing business and the investment climate in Indonesia. Policies that are too tight may hamper the growth of small and medium-sized businesses, while policies that are too loose may pose risks to creditors and other stakeholders.

The 2007 Constitution stipulates that the minimum authorized capital of a company is Rp 50,000,000 (fifty million rupiah), but it is important to understand that this minimum capital does not directly guarantee the stability and survival of the company or legal guarantees to third parties. A minimum capital of Rp 50,000,000 (fifty million rupiah) may be adequate for some types of small businesses, but not enough for larger businesses or those that require a significant initial investment. The existence of a minimum capital provides legal certainty that the company has a set initial capital, so it can be an initial indicator for third parties about the company's financial capabilities. However, this does not guarantee that the company will always be able to meet its obligations.

In the Job Creation Law, the company has undergone an expansion of the concept that has been introduced with a new term, namely Individual Company. The definition of an Individual Company based on Article 109 number 1 of the Job Creation Law is:

"PT, hereinafter referred to as the Company, is a legal entity that is a capital partnership, established based on an agreement, carrying out business activities with authorized capital wholly divided into shares or an individual legal entity that meets the criteria for Micro and Small Enterprises as regulated in the laws and regulations concerning Micro and Small Enterprises."

There are several legal entities recognized by the state of Indonesia, such as PT, Kommandietair Partnership (CV), Firm (Fa), Cooperative, Civil Partnership, and Foundation. (Julius, 2016:234). One of the ones that is often established by the public is a PT which has a special feature is the limitation of liability for shareholders as stipulated in Article 3 paragraph (1) of the 2007 UUPT which states: "The Company's shareholders are not personally responsible for the agreements made on behalf of the Company and are not responsible for the Company's losses in excess of the shares owned".

The authorized capital in a PT has previously experienced various dynamics of changes in provisions, and in 1995 for the first time the provisions on PT were introduced, with the amount of authorized capital for the establishment of a PT at that time at least Rp 20,000,000,- (twenty million rupiah), then in 2007 it was changed to Rp 50,000,000,- (fifty million rupiah). Actually, Government Regulation Number 29 of 2016 concerning Changes in the Authorized Capital of a PT still has a minimum authorized capital of Rp 50,000,000 (fifty million rupiah). But if one or all of the founders only have a net worth equivalent to the MSME criteria, then the authorized capital can be determined based on the agreement of the company's founders. However, the agreement must be stated in the deed of establishment of PT. The parties can also determine that the company's authorized capital is greater than what is specified in the UUPT. This kind of norm is also accommodated in the Job Creation Law, the Law that regulates certain business activities can determine the minimum amount of capital of a PT that is greater than the provisions as referred to in Article 1.

Although the Government's good intentions in building the current business world, there is legal certainty related to the laws and regulations applied in the authorized capital of the establishment of a university, it is necessary to synchronize the law to create harmony between the two rules. To create harmony with the two rules, it is necessary to conduct research vertically and horizontally. Vertical research is carried out by analyzing rules that have different degrees but regulate the same field while horizontal research is carried out by analyzing rules of the same degree and also regulating the same field. In the structuring of laws and regulations, there are 3 (three) kinds of principles (adagium) known as the principle of preference. The principle of preference consists of:

1. The principle of lex specialis derogatee legi generali "special legal rules repeal general laws".
2. The principle of lex superior derogate legi inferiori "the law that has a higher hierarchy beats the law that has a lower hierarchy".
3. The principle of lex posteriori derogate legi priori "existing laws and regulations then defeat the previous existing laws and regulations".

There is no clear certainty regarding the minimum limit of the authorized capital of PT. The implementation will have an impact on the stability and sustainability of a PT itself, a PT established with a very low authorized capital will be difficult for third parties to trust if the PT wants to cooperate or partner with a third party and with the establishment of a PT with a low authorized capital must pay attention to the aspect of protection for third parties for changes in the capital provisions of a company. The application of the formation of laws or laws and regulations must meet three elements of legal goals or ideals, according to Gustav Radbruch in idee des recht regarding the three elements of legal goals or ideals that must exist, namely legal certainty (rechtssicherkeit), justice (gerechtigkeit), and usefulness (zweckmasigkeit).

UUPT 2007 Jo Job Creation Law Jo PP No. 8 of 2021 contains changes to the provisions of PT in general, namely the establishment of a company in the UUPT which previously had to be 2 (two) people or more to become a Company can be established by 1 (one) person only, in order to accommodate the existence of a company form in the form of an Individual Company. Then, changes to other provisions of the company in general, namely changes in the previous modal dasar perseroan which was previously a minimum of Rp 50,000,000,- (fifty million Rupiah) is currently not determined by the minimum amount. However, still, the authorized capital is in accordance with the type of

business and business establishment of the company or about certain representatives of the company (Fuady, 2008).

The arrangement of the company's authorized capital which is submitted to the agreement of the founders, as stipulated in the Job Creation Law, has various implications for business stability and continuity as well as guarantees of legal certainty. On the one hand, the authorized capital handed over to the agreement of the founders of the PT can provide flexibility for the founders of the company to determine the authorized capital according to their needs and financial capabilities. This makes it easier to establish companies, especially for micro, small, and medium enterprises (MSMEs), which may not have large capital. The elimination of the minimum authorized capital requirement can increase the number of new companies, potentially encouraging innovation and economic growth. Conversely, inadequate capital can result in companies not being able to survive in the long term, especially in the face of difficult financial or economic challenges. From the perspective of legal assurance, it gives founders the freedom to set the capital they deem appropriate, which can be tailored to the specific business model and needs of the industry. However, it also carries risks related to business stability and continuity as well as guarantees of legal certainty for third parties such as creditors and suppliers, who may be more cautious and less confident in companies established without clear minimum capital requirements. This can hinder easy access to credit and business cooperation.

Legal Certainty of the Meaning of the Parties' Agreement on the Authorized Capital of a Limited Liability Company

The UUPT defines PT (persero) as: "A legal entity established based on an agreement, which carries out business activities with a certain capital, which is entirely divided into shares, and meets the requirements set forth in this Law and its implementing regulations". From the limitations given above, there are 5 (five) main things that can be concluded here that:

1. PT is a legal entity.
2. Established by agreement.
3. Running a specific business.
4. Has capital that is divided into shares.
5. Meet the requirements of the Law.

The adjustment of the minimum amount of authorized capital to be handed over to the founders of the PT is intended to provide ease of doing business and ensure order in the business world in investment by changing the amount of authorized capital which is still felt to be very burdensome for novice entrepreneurs. The Job Creation Law determines:

1. A PT is required to have the company's authorized capital.
2. The authorized capital of a PT must be stated in the articles of association contained in the deed of establishment of the PT.
3. The amount of authorized capital of a PT as referred to in paragraph (1) is determined based on the agreement of the founders of PT.

The characteristics of a PT which is a legal entity of a capital partnership require that the establishment of a PT must be carried out by 2 (two) or more people. Where later each of the founders of the PT is obliged to take a share of the shares when the PT is established (Article 109 number 2 of the Job Creation Law which amends Article 7 of the Limited Liability Company Law). Because of this, the establishment of an ordinary PT must be made based on an agreement. Where the agreement must be poured into an

authentic deed in front of a notary using Indonesian. The establishment of a PT must also be made in a notary to then get approval from the Minister of Law and Human Rights, so that it has the status of a legal entity.

The amount of capital for the establishment of a PT in the Job Creation Law is determined based on the agreement of the company's founders, which is further determined in Government Regulations. Furthermore, in Article 32 of the 2007 UUPT, it determines:

1. The Company's authorized capital is at least IDR 50,000,000 (fifty million rupiah).
2. The law that regulates certain business activities can determine the minimum amount of the Company's capital that is greater than the provisions of the authorized capital as intended in paragraph (1).
3. Changes in the amount of authorized capital as intended in paragraph (1) are stipulated by Government Regulation.

In particular, PT business entities are regulated in the 2007 UUPT, which has been effective since August 16, 2007. Prior to the enactment of the 2007 Constitution, the 1995 Constitution was in effect from March 7, 1996 to August 15, 2007. The 2007 Law has been adjusted to various developments that have occurred in business activities in the form of adding new provisions, improving and maintaining existing provisions from the previous Law which are still considered relevant to the current situation.

Through this latest regulation, the minimum amount of the company's authorized capital is "deviated" and left entirely to the agreement of the founders of PT. If re-examined in Article 32 paragraph (3) of the 2007 UUPT, it does 'open up opportunities' to change the amount of authorized capital through Government Regulations. This provision was made to anticipate changes in dynamic economic conditions. Referring to the explanation of the Job Creation Law which determines: "The determination of the amount of authorized capital of a PT based on an agreement, the founders of a PT is an effort to respect the principle of freedom of contract which gives the public the freedom to enter into an agreement in establishing a PT based on the provisions of civil law."

According to the researcher, the authorized capital in a PT is not an agreement based on the principle of freedom of contract, because the determination of authorized capital in a PT is a decision/determination (*beschikking*), where the purpose is to ensure the protection of third parties who will cooperate with the PT. The determination of the qualification of authorized capital in a PT is a reflection that the PT is healthy in management and operations. The difference in determining the determination of the authorized capital mentioned above can have legal implications in the practice of establishing a company which will later be used as the basis for making a deed of establishment of PT. Indonesia adheres to the teachings put forward by Hans Kelsen, it must be remembered that in the order of legislation, the norms regulated in the Government Regulation should be in line with the norms regulated by the law above, in this case the 2007 UUPT. In the event of a conflict between laws and regulations, between laws and customs, the principles of prevention will apply, namely: *lex specialis derogat legi generalis, lex postheory derogat legi priori,* and *lex superior derogat legi inferiori*.

The occurrence of a normative conflict between the 2007 Law and the Job Creation Law regarding the authorized capital mentioned above, when viewed from the hierarchy of laws and regulations in Indonesia, the position between the Limited Liability Company Law and the Job Creation Law is equal because both are laws passed by the House of Representatives (DPR) together with the President. If it is studied based on the principle of preference by using the principle *of lex posteriori derogate legi priori* as the knife of

analysis, then the existing laws and regulations then beat the previous laws and regulations. It is important to note that the Job Creation Law (*Omnibus Law*) is designed to harmonize and simplify various existing laws, including the Limited Liability Company Law. In the event of a conflict between the provisions of the Job Creation Law and the Limited Liability Company Law, the provisions in the newer and specific Job Creation Law in the context of harmonization of laws and regulations will take precedence. In general, in legal practice, newer and more specific provisions will have stronger binding force in cases of conflict with older or more general provisions.

Regarding legal certainty in the regulations regarding universities, clear regulations should be provided so that there are no conflicts of norms in the hierarchy of regulations, so that there will be no arbitrary power later. For this reason, the theory of legal certainty is used when a regulation is made and promulgated and regulated clearly and logically. There is a vagueness in the meaning of the "agreement of the parties" contained in the Job Creation Law. So that to be able to explain the meaning of the agreement between the parties, it is necessary to have a legal interpretation/legal interpretation. Interpretation or interpretation is one of the methods of legal discovery that provides a clear explanation of the text of the law so that the scope of legal rules can be applied in accordance with certain events.

The meaning of "based on the agreement of the parties" in the Job Creation Law is that the founders of a PT can establish a PT with an authorized capital of less than Rp 50,000,000 (fifty million rupiah) as long as the agreement for the establishment of the PT has reached conformity or is approved by the parties in the establishment of the PT. The main substance regulated in the Job Creation Law is to eliminate the amount of authorized capital for the establishment of a PT based on the agreement of the founding parties of the PT. Therefore, if it is associated with the limited liability of the company, it will have the impact of no protection for third parties. This is because the minimum authorized capital requirement is intended so that when a PT is established, it at least already has capital, which is as much as the paid-up capital and can also be a guarantee for every bill from a third party to the PT and all of this aims to provide a guarantee of protection against third-party bills. With the elimination of the minimum amount of authorized capital in the establishment of a PT, it will actually cause a lack of legal certainty in determining the authorized capital in the establishment of a PT. This will also have an impact on the lack of public trust that will cooperate with the PT.

Legal protection of authorized capital based on the agreement of the founders of universities in the Job Creation Law can be analyzed through 3 (three) main aspects, namely the aspect of legal certainty, the aspect of justice and the aspect of utility. This analysis can be linked to Gustav Radbruch's theory of legal certainty, which emphasizes that law must meet the principles of certainty, justice and utility. Gustav Radbruch stated that legal certainty is one of the main goals of law, which requires the law to be predictable, consistent and provide a sense of security for the community. In the Job Creation Law, the elimination of the minimum authorized capital provision provides flexibility for PT founders to determine the authorized capital based on their agreement. Judging from the aspect of legal certainty, this can cause legal uncertainty if there are no clear limits or guidelines. There needs to be a minimum guideline or standard in determining authorized capital, albeit rigidly, to ensure protection for creditors and third parties.

The aspect of justice in law according to Gustav Radbruch is related to the fair distribution of rights and obligations among all parties involved. Justice can be realized

if the founders of the PT establish a reasonable capital, which reflects their commitment to the company and responsibility to third parties. In practice, the determination of authorized capital based on an agreement can create fairness between the founder (shareholders) and parties outside the company (creditors and stakeholders), if the agreed capital is sufficient for the company's operations and fulfills its financial obligations. To achieve fairness, the law needs to ensure that the authorized capital between the founders does not harm third parties. Injustice can arise if the agreement between the founders is not based on fair principles, for example one of the parties who has a weaker bargaining position so that it is vulnerable to exploitation. Certainty can be maintained if the rules regarding the agreement are clearly explained in the implementing regulations. Legal certainty can be compromised if there are no clear limits or guidance on how these agreements should be created and implemented. This causes uncertainty and ambiguity in law enforcement related to the authorized capital of PT. Creditors may be harmed if the authorized capital is one of the guarantees that the company has the assets to meet its obligations. In the case of bankruptcy, creditors may not be able to recover their loans if the paid-up capital is inadequate.

Benefits can be achieved through the elimination of minimum capital restrictions that allow more business actors, including MSEs, to establish PTs and participate in the formal economy. This can boost economic growth, create jobs and increase national competitiveness. While the elimination of minimal authorized capital can increase economic benefits, there needs to be legal protection that prevents misuse. Adequate authorized capital provides various protection and security benefits for creditors, which is in line with the principle of utilization. Based on the principle of utility, the minimum capital arrangement of a PT must consider the balance of benefits for shareholders and creditors.

In addition, there should be a supervisory mechanism in place to ensure that the company is not only established for speculative or fraudulent purposes, which could harm other parties. Through the arrangement of authorized capital based on the agreement, the founders of the PT strive to create a more *inclusive* and *flexible business environment*. However, to achieve legal certainty, legal justice and legal benefits, there needs to be a balance between *flexibility* in determining authorized capital and protection for third parties. The law should establish mechanisms that ensure transparency, accountability, and effective oversight to protect all interested parties.

Gustav Radbruch in the theory of the legal mind stated that in realizing the 3 (three) basic values of law (the value of justice, the value of usefulness and the value of legal certainty) there is often a clash of values. Therefore, Gustav Radbruch put forward a "priority principle" which states that in the purpose of law it is mandatory to prioritize justice, then followed by benefits and finally for legal certainty, with the hope that the application of this priority principle can avoid prolonged conflicts. This means, if the theory of legal objectives is associated with changes in the regulation of authorized capital in the establishment of a PT regulated in the Job Creation Law, then what should be put forward first is the value of justice of the parties.

Article 7 paragraph (1) of the Limited Liability Company Law stipulates that the establishment of a company must be carried out by at least 2 (two) people using official documents issued by a notary in Indonesian. This article emphasizes that a PT must have at least 2 (two) founders who put capital into the company, which is then distributed to individuals in the form of shares. However, there are no other provisions that explain how to have a minimum of 2 (two) shareholders. PT means a legal entity that is a capital

partnership, established based on an agreement, carrying out business activities with authorized capital which is entirely divided into shares and meets the requirements set by laws and implementing regulations, in accordance with the sound of Article 1 number 1 of the Limited Liability Company Law. From this understanding, we can take a meaning that the company is a legal entity which is a capital partnership. The company, which is a legal entity, also has another function as a place for the parties to carry out cooperation called contractual relationships. This collaboration creates a deliberately created legal entity, namely the company as an "*artificial* person".

In Redbrich's opinion, there are 4 (four) things related to the meaning of legal certainty. First, positive law in the form of legislation. Second, the law is based on the facts or the law that is established must be true. Third, the reality must be formulated clearly so as to avoid mistakes in its meaning, in addition to being easy to implement. Fourth, positive laws must not be easily changed. Regarding legal certainty for the capital income of PT in other forms, this is clearly stated in Article 34 paragraph (1) of the 2007 UUPT. Another form of share deposit is known as "in-goods" or "inbreng" or "capital brought in to/put into the business". The provisions of the deposit of shares in other forms are:

1. It can be a tangible or intangible object.
2. Valued with money.
3. It was clearly accepted by the company.
4. Deposits of shares in other forms other than money must be accompanied by details related to their value or price, type, status, place of residence and others that are deemed necessary for clarity regarding the deposit.

One of the characteristics of a PT as a legal entity recognized by the doctrine is the existence of separate wealth between the wealth of the PT and the wealth of shareholders. Similarly, the responsibility of shareholders is only limited to the number of shares deposited (Article 3 paragraph (1) of the UUPT). These provisions do not apply if there are rights mentioned in paragraph (2) of the Limited Liability Company Law. PT was established with the aim of forming a legal entity with the result of separate wealth from shareholders and limited liability. Judging from the provisions of the article, the Cooperation Agreement can be included in an unnamed or *inominaat* agreement. This is because the Cooperation Agreement is not included in the type of named agreement, in other words it is not regulated in detail in the Civil Code. However, named and unnamed agreements are subject to Book III of the Civil Code. The purpose of the distinction in Article 1319 of the Civil Code is that there are agreements that are not governed by general teachings as contained in titles I, II, and IV.

In addition to the provisions of Article 1320 of the Civil Code, there are 5 (five) principles that underlie the law of agreements, namely the principle of freedom of contract, the principle of *consensualism*, the principle of *pacta sunt servanda* (the principle of legal certainty), the principle of good faith, and the principle of personality. The principle of freedom of contract can be analyzed from the provisions of Article 1338 paragraph (1) of the Civil Code, which reads "All agreements that are legally entered into shall be valid as law for those who make them." The principle of freedom of contract is a principle that gives the parties the freedom to:

1. Making or not making an agreement.
2. Make an agreement with anyone.
3. Determine the content of the agreement, its implementation, and its terms, and
4. Determine the form of the agreement, namely written or oral.

Article 1317 of the Civil Code allows agreements for the benefit of third parties under certain conditions, while Article 1318 extends this to include heirs and those who acquire rights from the parties involved. In the context of establishing a Limited Liability Company (PT), the relationship between shareholders and the company is grounded in an agreement, as reflected in the Articles of Association (ADPT). This agreement creates rights and obligations, but once the PT is legally recognized, it becomes an independent legal entity, with the founders transitioning to shareholders.

The regulation of authorized capital following the Job Creation Law raises concerns about legal certainty. While the law facilitates business creation and investment, especially for new entrepreneurs, it fails to provide a clear minimum threshold for authorized capital, leading to potential risks and abuse. To ensure legal certainty, it is proposed that a minimum authorized capital of Rp 50,000,000 be established for PTs, with provisions for MSMEs to base their authorized capital on net worth criteria, verified and included in the PT's deed of establishment.The importance of the minimum limit on the authorized capital of a PT and the classification of business fields, even though in the Law on Limited Liability Companies of Companies that carry out certain business activities, the minimum amount of the Company's authorized capital must be in accordance with the provisions of laws and regulations. Examples of several fields or certain business activities that are required to meet the minimum authorized capital requirements according to laws and regulations are PT engaged in banking (community fund association), insurance, certain construction/development and so on. The authorized capital is determined based on the agreement of the founders of PT. In addition, the Job Creation Law which amends Article 32 of the Limited Liability Company Law is as follows:

1. The company is required to have the company's authorized capital.
2. The amount of the company's authorized capital is determined based on the decision of the company's founders.
3. Further provisions regarding the company's authorized capital are regulated in Government Regulations.

With this authorized capital or paid-up capital, it can provide direct benefits to the company. Here are the benefits of company capital:

1. Helping the company grow.
2. Helping with the company's operational costs.
3. Increase the trust of clients or investors who will work together.
4. Meet the needs of business development such as opening new branches, expanding markets, transportation, company investors and other company needs.

The Job Creation Law aims to facilitate the business climate in Indonesia by simplifying regulations and empowering MSMEs, crucial for the nation's economic backbone. This includes the creation of Individual Companies, a new legal entity form designed specifically for micro and small enterprises, distinguishing it from traditional businesses like Trading Enterprises (UD) that lack legal entity status. The Individual Company model offers limited liability, protecting owners' personal assets, a significant improvement over UD.

In the context of corporate governance, the General Meeting of Shareholders (GMS) holds critical decision-making power. However, challenges arise when shareholders hold equal stakes, leading to potential deadlocks that can impede company decisions. This issue underscores the importance of clearly defined rules within a company's constitution to prevent such stalemates.

The elimination of the minimum authorized capital requirement under the Job Creation Law facilitates the establishment of PTs, encouraging investment and economic growth. However, this also increases risks for creditors and third parties, as there is less assurance of a company's financial stability. Legal reforms and a strong corporate governance framework are essential to balance ease of business formation with adequate protection for stakeholders, ensuring sustainable economic development.PT as one of the pilots of economic development as well as legal developments and community needs, so it needs to be replaced with new laws and regulations, so that it becomes the legal basis for the development of the economic sector and the legal framework for regulating the application of the principles of good *corporate governance* in a company in Indonesia. As stated by Mochtar Kusumaatmaja, Law is one of the social rules (in addition to moral, religious, moral, polite, customary and others), which is a reflection of the values that apply in society, so that a good law is a law that is in accordance with living *law*. Development Law Theory by Mochtar Kusumaatmadja Development Law Theory which contains:

1. The Function and Development of Law in National Development;
2. Legal Development in the Context of National Development; and
3. Law, Society and National Legal Development.

Based on these views, it can be stated that legal reform is not just a renewal of the legal substance, but a renewal of the orientation and values that underlie the rule of law. Thus, legal reform must be interpreted as adopting new legal values as a result of changes in the values of social life. These new legal values are the philosophical basis for the new legal substance. Universally, it can be said that the main function of law is as a means of controlling social life by balancing the interests that exist in society or in other words as a means of social control.

The main points of thought that underlie the law as a means of renewal or development according to Mochtar Kusumaatmadja are:

1. that order and order in development and renewal efforts are indeed desirable, even considered (absolutely) necessary;
2. that law in the sense of legal rules or regulations is expected to direct human activities in the direction desired by development and renewal.

In order for the reform of economic law to be able to provide answers to the challenges and goals of economic development, it must include 3 (three) major components that are interrelated with each other. The three components consist of:

1. Legal development whose activities contribute academic manuscripts of new legislation or changes in legislation in the field of economic activities.
2. The Legal Information System that prepares makes it possible to facilitate the accessibility of legislation through sophisticated modern technology.
3. Legal Education, whose function is to improve the ability of human resources in the field of law.

Legal reform in the field of Limited Liability Companies (PT) is essential to support a market economy by ensuring protection for shareholders, creditors, and other related parties. This includes clear regulations on capital reduction, mergers, consolidations, and takeovers to prevent unfair competition. To address the challenges of economic development, three key components must be prioritized: legal development, legal education, and a legal information system. Legal development should focus on updating legislation and improving the responsibilities of company organs. Legal education needs to enhance the quality of human resources through reforms in legal institutions and

continuous training. The legal information system should utilize technology to disseminate laws efficiently.

To ensure that PT law contributes to economic growth, reforms through the Job Creation Law should update the legal framework while being responsive to market needs. Adjustments to the regulation of authorized capital are necessary to provide legal certainty for third parties. Mochtar Kusumaatmadja's theory of development law, which sees law as a tool for social and economic progress, can guide this process. Legal amendments to the Job Creation Law and additional regulations can clarify minimum capital requirements, ensuring legal certainty and protection.

Good corporate governance is fundamental for creating transparent, fair relationships between stakeholders. A consensus-based agreement between parties ensures legal certainty in business transactions. Effective governance improves shareholder value and benefits companies and their stakeholders. However, various challenges remain in implementing good corporate governance in Indonesia.

1. Legal Constraints.
   Corporate governance must ensure equal treatment and protection of the rights of all shareholders from various possible abuses by certain parties. In Indonesia, minority shareholders and other *stakeholders* have little opportunity to protect themselves against abuse by majority shareholders. In our legal system, mechanisms for such actions are indeed regulated, but because of the weakness of law enforcement and judicial practice, its effectiveness is limited. Likewise, the bankruptcy and court system that has weaknesses has made creditors have only a small influence on their debtors.
2. Cultural Constraints.
   As mentioned earlier, there is a view that the practice of *corporate governance* is only a form of compliance with regulations or regulations and not as a system needed by the company to improve performance. This results in the application of *good corporate governance* not being implemented wholeheartedly, so that its effectiveness is reduced. Likewise, with the existence and culture of the assumption that fraud and insider *transactions* are only ordinary and commonplace, and even acts of corruption are seen as an act that is not wrong. This assumption is clearly contrary to the spirit of *corporate governance*, so it will interfere and even hinder the running of the application. This condition is compounded by the weak practice of disclosure and openness as well as the ineffectiveness of disclosure and discipline mechanisms in the capital market. In some cases, there is also a phenomenon that managers and directors are very immune to accountability to *stakeholders*.
3. Political Constraints.
   This obstacle is mainly related to state-owned companies, namely state-owned companies. As said above, the definition of the state is always vague, sometimes interpreted as the Government, but there are also those who interpret it as other state institutions. This is compounded by the blurring of the separation between business interests and the interests of the Government and other state institutions. As a result, various business decisions in SOEs are highly intervened by the Government and in other cases SOEs are actually exploited by politicians (Prasetiantono in Nugroho and Siahaan, 2005). In some cases, this also happens to private companies. Another condition that may be of concern is that the role of capital market institutions (Bapepam as well as JSX) as regulatory institutions is still not strong enough in covering up the weaknesses that exist in the courts.

4. Business Environment Constraints.
   As is common in various other Asian countries, Indonesia's companies (even in the form of companies) are mainly family-owned. With this condition, the practice of *corporate governance* may deviate from the practice that should be due to family considerations and interests, for example in the appointment of independent commissioners. This situation in various cases also remains true even though these companies have entered and traded their shares on the capital market (*publicly listed*).
5. Other obstacles.
   Banks in Indonesia have been recognized as one of the financial *intermediary* institutions that play a very important role in providing (and helping to provide) the funds needed by business people. As fund providers (loans), these banks should play a major role in monitoring the company's activities, including the activities of their managers in the use of funds. In various cases, it can be seen that this *monitoring* function does not run effectively, in fact it has happened during the assessment process of the loan proposals submitted. This can be seen from the cases of approval of credit proposals that are not / less *feasible* so that in the end it causes problems in the later return (bad credit).

The OECD's corporate governance principles emphasize transparency, market efficiency, and clear division of responsibilities among supervisory, regulatory, and enforcement authorities. In Indonesia, corporate governance principles are rooted in Pancasila and the 1945 Constitution and are aligned with international standards. However, many Indonesian companies still struggle with GCG implementation, often driven by regulatory compliance rather than cultural integration. GCG is essential for long-term business success and investment attraction, ensuring transparency, accountability, and protection of stakeholders.

Investor confidence in a company is closely linked to its corporate governance practices, which influence company value and stock prices. Factors such as company size and capital structure can impact company value, with GCG playing a critical role in mitigating risks and ensuring stability. Legal certainty in the regulation of minimum capital is crucial for supporting GCG and protecting third parties. Indonesia's flexible minimum capital regulations under the Job Creation Law contrast with stricter requirements in civil law countries, raising questions about the best approach for ensuring business stability and stakeholder protection.Given that Indonesia adheres to a *civil law* legal system that generally regulates the minimum amount of authorized capital of a PT, maintaining some form of authorized capital regulation can provide legal certainty and protection for all stakeholders. However, to encourage innovation and economic growth, Indonesia can consider a more flexible or hybrid approach, for example:

1. Sets different authorized capital requirements based on the size and type of company, so that small companies and startups can start with lower capital.
2. Implementing supervision and regulations that are in accordance with the risks faced by the company, so that there is still protection for creditors and shareholders without hindering entrepreneurship.

With this approach, Indonesia can maintain legal certainty while encouraging a more dynamic and innovative business environment.

Conclusion

The conclusion in this study can be formulated as follows: (1) As a result of the implementation of changes in the regulation of the authorized capital of a Limited Liability Company in Indonesia, the regulation of the authorized capital of a PT after the issuance of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation (Job Creation Law) causes legal uncertainty. Its implementation is in the provisions of Article 109 paragraph 3 of the Job Creation Law, especially related to the establishment of a legal entity of a limited liability company which must be established by a minimum of 2 (two) people, but there is no minimum amount of authorized capital in detail and clearly, so that it has the potential to cause legal uncertainty and have a detrimental impact on the PT that is run. The lack of restrictions and qualifications, and even the low authorized capital of a PT has a negative impact both internally and externally. (2) Legal certainty means the agreement of the parties to the authorized capital of a Limited Liability Company in the legal theory of Development is intended to be able to realize regulations in an ideal and proportionate manner in order to provide the purpose of legal certainty. The Job Creation Law in order to provide legal certainty contains the general principles of the establishment of the company as regulated in Law No. 40 of 2007, the Criminal Code and the Civil Code. Adopting from the comparison of several other countries that on average civil law countries such as China, Germany and Korea that the rules regulate in detail the capital of each business. The legal reform includes the determination of a minimum value in detail and clearly regarding the authorized capital of a Limited Liability Company. This substance is applied to provide legal certainty, namely the addition of the implementation of the qualification of a Limited Liability Company based on the authorized capital in the establishment of this in accordance with the theory of good corporate governance, namely maintaining a balance between economic and social goals and between individual and communal goals.

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