

## **THE FULFILLMENT OF THE CLARITY PRINCIPLE TOWARDS THE FORMULATION ARRANGEMENT IN THE RECOGNITION OF STATUTORY BODIES WITHIN THE LIMITED LIABILITY COMPANY**

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### **Abstract**

*For a legal entity, legality is the most important element, because it indicates a state of legality or legitimacy so that it is recognized by law and society as a legal subject. Limited Liability Company, requires a special establishment procedure to legalize legal entity status, as stated in Article 109 number 2 Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to become Law which has changed the arrangements regarding the establishment of a Limited Liability Company which was previously regulated in Article 7 of the Law Number 40 of 2007 concerning Limited Liability Companies. After the amendment, the arrangement regarding the acquisition of Limited Liability Company legal status is "after being registered with the Minister and obtaining proof of registration". The Research Team sees a legal issue, namely whether changing the arrangement meets the principle of clarity of formulation as stipulated in Article 5 letter f of Law Number 12 of 2011 Concerning the Establishment of Legislation. Furthermore, the Research Team also analyzed the proper legal reconstruction in the regulation regarding the acquisition of Limited Liability Company Legal Entity status, so that the principle of clarity of formulation was fulfilled as one of the principles for the Formation of good Legislation. This research is a type of normative juridical research using statutory and conceptual approaches. Based on the analysis of the Research Team, the arrangement regarding the time of acquiring the legal status of a Limited Liability Company does not meet the clarity principle of the formulation. While the proper legal reconstruction is to provide a formulation that uses a choice of words or terms, as well as the clarity of legal language in which understandable so that it minimizes the excessive interpretations in its implementation.*

**Keywords:** *Clarity Principle of the formulation; Legal Entity Status; Limited Liability Company*

### **1. INTRODUCTION**

There are clear provisions on the economic and social welfare in the 1945 Indonesian republic's constitution (UUD NRI in 1945). It is possible to see that the act of 1945 was a result of both an economic and political document. As a result, the NRI Act of 1945 served as both the political and economic constitutions. Economic democracy, which included good features that had to

be maintained and promoted as the direction of the realization of national development, was one of the fundamental ideals listed in article 33 of the NRI constitution in 1945.

The legal system that promotes, directs, and regulates diverse economic development activities is one of the supporting infrastructures required to meet the nation's development goals. Collaboration between the community and the government is also necessary. The community is the primary driver of economic growth, and the government is the regulator tasked with fostering harmony in a concerted effort to achieve the country's development goal.<sup>1</sup>

Corporate executives choose among several corporate entities depending on the type and purpose of the company itself. As a result, since many centuries ago, many types of companies have been developed that change and evolve with the times.<sup>2</sup> A business entity is a unified economic legal that creates a corporation to manage a variety of enterprises that are established, run, and settled on Indonesian territory permanently and continuously to generate profits and revenues.<sup>3</sup>

In Indonesia currently, there are many different sorts of corporate enterprises. The majority of these business models, including the Dutch Government, are archaic. These include the Maatschap (Private Partnership), the Vennootschap Onder Firma (VOF), the Limited Liability Corporation (PT), the Persekutuan Komanditer (Commanditaire Vennootschap), the firm abbreviated as CV, and the Trade Company (PD).<sup>4</sup>

Business entities can be split into two categories, or 2 (two), depending on their legal structure, namely: 1. Non-legal entity enterprises. Examples include: Sole Proprietorship and Partnership company ((Maatschap, Firm, CV); 2. Legal entity enterprise is a business entity that has a legal entity, for instance Limite Company (PT), Cooperation, State-Owned Enterprises (PERUM and PERSERO). The two sets of corporate organizations appear to be identical at first look. The problem of liability from partners or other participants in the business organization, however, presents a pretty basic distinction when examined from the standpoint of corporation law. Legal entity (*recht persoon, legal persons, and persona moralis*) is legal subject.<sup>5</sup> Besides human as carrier of rights (legal subject), in law there are also entities or associations that can also have rights and carry out legal actions like a human being. These entities and associations have their own wealth, participate in legal activities by intermediary management, can be sued and

1 Ratnawati Prosodjo, "RUU Tentang Usaha Perseorangan Dan Badan Usaha Bukan Badan Hukum," *Disampaikan Pada Acara Sosialisasi RUU Usaha Perseorangan Dan Badan Usaha Bukan Badan Hukum, Diselenggarakan Oleh Direktorat Jenderal Peraturan Perundang-Undangan Departemen Hukum Dan HAM RI Di Hotel Kartika Chandra, Jakarta* 21 (n.d.).

2 Munir Fuady, "Pengantar Hukum Bisnis, PT," *Citra Aditya Bakti, Bandung*, 2002. pg. 35.

3 Zaeny Asyhadie, "Hukum Bisnis Proses Dan Pelaksanaannya Di Indonesia," *Jakarta: Raja Grafindo Persada*, 2005. Pg. 34.

4 Kurniawan, *Hukum Perusahaan "Karakteristik Badan Usaha Berbadan Hukum Dan Tidak Berbadan Hukum"* (Yogyakarta : Genta Publishing, 2014). Pg. 12.

5 Simanjuntak PNH, "Hukum Perdata Indonesia," *Kencana, Jakarta*, 2015. Pg. 25.

can also be sued before a judge. Such bodies or associations are called legal entities or *rechtspersoon*, which means people created by law.<sup>6</sup>

A Limited Liability is a type of legal subject that has rights and duties similar to those of individuals in general. Legal subject means a person specifically formed by law might also be considered a legal entity. A Limited Liability Company's wealth is distinct from the management's wealth since it is a different legal entity. A legal business company that was created falls under the concept of a Limited Liability Corporation as a notable entity. It operates independently of its owners and operates within predetermined boundaries, much like regular humans do. Another legal entity that has the same rights to everything as other entities can be sued and file a lawsuit, and has its assets is a limited liability company.<sup>7</sup>

The Commercial Code is where the history of limited liability company regulation begins (KUHD). Articles 1233 to 1356, as well as Articles 1618 to 1652, of the Civil Code, also discuss other arrangements. Act No. 4 of 1971 Concerning Changes and Additions to Provisions of Article 54 of the Commercial Law Code modified and enhanced the KUHD's limited liability company laws. After being in effect for over 150 years, Indonesia has finally passed legislation that controls Limited Liability Companies, namely Law No. 1 of 1995 concerning Limited Liability Companies. After 12 years of enactment, Law Number 1 of 1995 must be amended as well as repealed due to discrepancies with the needs of enterprises development in society. On August 16, 2007, the government promulgated Law No. 40 of 2007 concerning Limited Liability Companies, where Article 160 of this Law states that *this law will come into force after Law no. 1 of 1995 concerning Limited Liability Companies was repealed and declared invalid*.

The Job Creation Act eventually underwent a transition to legislation No. 11 of 2020, often known as the Omnibus law, after being in effect for 13 years. The business players can invest more easily thanks to Law No. 11 of 2020 on Job Creation's Article 105, which modifies, repeals, and imposes new rules. Law No. 40 of 2007 governing Limited Liability Corporations is one of the regulated provisions. In addition, Law No. 40 of 2007 covering Limited Liability Companies has had several provisions modified, according to Article 109 of Act No. 11 of 2020 Concerning Employment Creation, namely the provisions of Article 1 No. 1, Article 7, Article 32, Article 153, and between Article 153 and 154 inserted 10 articles namely Article 153A, Article 1528, Article 153C, Article 153D, Article 153E, Article 153F, Article 153G, Article 153H, Article 153I, And Article 153J.

Amendment in the Limited Liability Company Law have a significant impact, especially in terms of the general definition of a Limited Liability Company. It stated that Article 109 number 1 of Law No. 11 of 2020 concerning Job Creation defines a Limited

<sup>6</sup> PNH., Pg. 25.

<sup>7</sup> Binoto Nadapdap, *Hukum Perseroan Terbatas Berdasarkan Undang-Undang No. 40 Tahun 2007* (Permata aksara, 2012). Pg. 5-6.

Liability Company as follows: “A *Limited Liability Company, hereinafter referred to as the Company, is a legal entity that is a capital partnership, established under an agreement, conducting business activities with authorized capital entirely divided into shares or individual Legal Entities that meet the criteria for Micro and Small enterprises as stipulated in the Laws and Regulations regarding Micro and Small Enterprises.*” The provisions of the article have added to the scope of Limited Liability Companies, namely: “*Individual Legal Entities that meet the criteria for Micro and Small enterprises as stipulated in the Acts and Regulations concerning Micro and Small Enterprises*”.

On November 25, 2021, the Constitutional Court issued a decision on the Formal Test case of Law No. 11 of 2020 concerning Job Creation against the Constitution of the Republic of Indonesia of 1945. This decision is found in Decision No. 91/PUU-XVIII / 2020. Law No. 11 of 2020 concerning Job Creation itself has undergone the first formal test in the Constitutional Court (MK). The establishment of Law No. 11 of 2020 concerning Job Creation was found to violate the NRI Constitution of 1945 and, as long as it is not interpreted as “*no improvement has been made within 2 years since this decision is pronounced,*” the Constitutional Court also orders the law’s authors (President and DPR) to make improvements within a maximum of 2 years after this decision is pronounced and if within that grace period, no improvement is made, then Job Creation Acts (the Law No. 11 of 2020) becomes permanently unconstitutional.

After 2 years of no improvement, the Job Creation Act (Law No. 11 of 2020) is declared invalid. Furthermore, the government issued the Government Bill in Lieu of Law (Perpu) No. 2 of 2022 concerning Job Creation on December 30, 2022. Several applicants submitted for formal and judicial review of the Perpu to the Constitutional Court through Application Number 5/PUU-XIX/2023 and No. 6/PUU-XIX/2023. This is because the Perpu is considered not to fulfill the mandate and amendment of Decision Number 91 / PUU-XVIII / 2020 and does not comply with Decision Number 139 / PUU-VII / 2009. The issuance of the Perpu certainly creates fair legal uncertainty and the process of its formation is contrary to Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia because it does not meet the requirements of force crunch which should be based on objective circumstances. Until finally, the plenary session meeting of the House of Representatives of the Republic of Indonesia related to Level II Discussion on Decision Making on the Draft Law (RUU) for the Job Creation Perpu into the Acts on March 21, 2023, resulted in a decision that the Legislation Body of the House of Representatives of the Republic of Indonesia approved the Job Creation Perpu Determination Bill to be enacted into law. The articles in Law Number 40 of 2007 concerning Limited Liability Companies, which had previously been amended by Law Number 11 of 2020 concerning Job Creation, were retained in the Perpu which had been passed into the Constitution after Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation was incorporated into Law Number 6 of



2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law.

The most crucial component is a company's or business entity's legality since it confers legitimacy on the firm and allows it to be recognized by the public. In other words, the firm's legality must be valid under laws and regulations, with protection provided by different papers until the company is legitimate in the eyes of the law as it is understood by the government that is in power at the moment.<sup>8</sup> To form a Limited Liability Corporation that validates or confirms its position as a legal body, as stated by laws and regulations, particular processes are required.

Article 109 number 2 of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law, has amended the provisions regarding the establishment of Limited Liability Companies which was originally regulated in Article 7 of Law Number 40 of 2007 concerning Limited Liability Companies. Article 7 Paragraph (4) of Law Number 40 of 2007 concerning Limited Liability Companies stipulates that *"The Company obtained the status of a legal entity on the date of issuance of the ministerial decree regarding the ratification of the Company's legal entity."* After the enactment of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law, the provision was changed to *"The Company obtains legal entity status after being registered with the Minister and obtaining proof of registration."*

From these legal facts, the Research Team discerns a legal question, namely whether the modifications to the regulation governing the acquisition of Limited Liability Company legal entity status have complied with the requirement for clarity of formulation as stated in Article 5 letter f of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. It is said in this article that the formulation of laws and regulations must be done under the principles of excellent laws and regulations, one of which is the concept of formulation clarity. The term "principle of clarity of formulation" is used in the explanation section of the article to refer to the technical requirements of drafting laws and regulations, systematics, word choice, and clear and understandable legal language to avoid various interpretations during implementation. However, the Ministry of Law and Human Rights of the Republic of Indonesia continues to issue legal documents in the form of a Ministerial Decree on the Ratification of the Establishment of Limited Liability Company Legal Entities as part of the process for ratifying the status of a Limited Liability Company legal entity. The Research Team also felt that it was necessary to analyze the proper legal reconstruction in the agreements regarding the acquisition of Limited Liability Company Legal Entity Status to ensure that the principle

8 Janus Sidabalok, *Hukum Perusahaan: Analisis Terhadap Pengaturan Peran Perusahaan Dalam Pembangunan Ekonomi Nasional Di Indonesia* (Penerbit Nuansa Aulia, 2012). Pg. 3.

of formulation clarity, which is one of the principles of good laws and regulations, is satisfied in the context of the formation of such laws and regulations and can, ultimately, lead to the achievement of the legal objectives, namely legal certainty.

This background further led the Research Team to conduct research with the title, *The Fulfillment Of The Clarity Principle Towards The Formulation Arrangement In The Recognition Of Statutory Bodies Within The Limited Liability Company*.

This study is intended to be “normative” research (dogmatic). Using three distinct approaches, the legislative method, the historical and the conceptual approaches.

Based on the above background, this study aims to find out the regulation regarding the acquisition of Limited Liability Company Legal Entity status in Article 109 Number 2 of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to enact Law meets the principle of clarity of formulation in the Establishment of Good Laws and Regulations and the proper legal reconstruction in the regulation regarding the acquisition of a Limited Liability Company Legal Entity Status.

## 2. ANALYSIS AND DISCUSSION

### 2.1. Fulfillment of the principle of clarity of formulation in the formation of good laws and regulations regarding the acquisition of Limited Liability Company Legal Entity Status

#### 1. Stages of Limited Liability Company Establishment

Based on the Limited Liability Enterprise Acts, there are 3 (three) stages in the establishment of a Limited Liability Company which is a capital partnership, namely:

1. Preparation of the Deed of Establishment containing the Articles of Association before a Notary (Article 7 Paragraph (1));
2. Ratification of legal entity status, through registration with the Minister and obtaining proof of registration. (Article 7 paragraph (4));
3. The announcement in the Supplement to the State Gazette of the Republic of Indonesia (TBNRI) ((Article 30 Paragraph (1));

In the development of the regulation, namely after the enactment of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law (Job Creation Law), there are differences in regulations related to the stages of establishment of the Limited Liability Company mentioned above. First, the provisions of Article 7 Paragraph (1) of the Limited Liability Company (PT) Law, that: *“The Company is established by 2 (two) or more persons by notarial deed made in Indonesian”*. To this Article there is an exception, namely in Article 7 Paragraph (7) of the PT Law, which by Article 109 number 2 of the Job Creation Law, has been amended, so that it becomes as follows:

*“The provisions requiring the Company to be established by 2 (two) or more persons as*

*referred to in paragraph (1), paragraph (5), and paragraph (6) do not apply to:*

- a. A Company whose entire shares are owned by the State;*
- b. Regional Owned Enterprises;*
- c. Village-Owned Enterprises;*
- d. Companies that manage stock exchanges, clearing and guarantee institutions, depository and settlement institutions, and other institutions under the Law on Capital Market; or*
- e. Companies that meet the criteria for Micro and Small Enterprises.*

Article 109 Number 5 of the Job Creation Law has added Article 153A as follows:

- (1) “Companies that meet the criteria for Micro and Small Enterprises can be established by 1 (one) person.
- (2) The establishment of a Company for Micro and Small Enterprises as referred to in paragraph (1) shall be carried out based on the statement of the establishment made in Indonesian.
- (3) Further provisions regarding the establishment of the Company for Micro and Small Enterprises shall be regulated in the Government Regulation.”

The article governs the creation of individual legal entities that satisfy the requirements for Micro and Small Enterprises. If a legal entity is created by a single person, it need not be notarized in Indonesian and can instead be created based on a statement of the establishment made in Indonesian. Furthermore, the government regulations referred to in paragraph (3) are Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Change, and Dissolution of Companies that meet the criteria for Micro and Small Enterprises.

The formation of a separate business for MSEs (Small and Medium Enterprises) that is merely based on a declaration letter without a notarial deed does not adhere to the legal standards of Limited Liability Companies. The legitimacy of the founder's documents and identity are not guaranteed if a Limited Liability Corporation is merely formed through a statement letter. The Limited Liability Company's legitimacy will be uncertain and problematic. It is necessary to take into consideration the effects of Limited Liability Companies and Individual Companies as legal entities, the validity of papers, and the identities of the founders. As a result, the Notary Public's declaration of the establishment is still required to confirm the Individual Company's legality and the accuracy of the paperwork and the identity of the founder even if only for MSEs.<sup>9</sup>

The second difference related to the stages of establishment of a Limited Liability Company after the enactment of the Job Creation Law is about when the Company will obtain legal entity status. In Article 7 Paragraph (4) of the Limited Company Law, “*The Company obtains legal entity status on the date of issuance of the Ministerial Decree regarding the ratification of the Company's legal entity.*” Meanwhile, Article 109 number

<sup>9</sup> Amelia Sri Kusuma Dewi, “Karakteristik Perseroan Perorangan Sebagai Perseroan Yang Memenuhi Kriteria Untuk Usaha Mikro Dan Kecil,” *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 1 (2022): 31–54, <https://doi.org/10.33474/yur.v5i1.13747>.

2 of the Job Creation Law has changed the sound of Article 7 Paragraph (4) of the PT Law to *“The Company obtains legal entity status after being registered with the Minister and obtaining proof of registration.”*

The stage of ratification of legal entity status and its announcement is governed by Government Regulation Number 8 of 2021 concerning the Company’s Authorized Capital and Registration of Establishment, Change, and Dissolution of Companies that meet the criteria for Micro and Small Enterprises, specifically for Individual Companies, in Article 6 Paragraphs (3) and (4). By registering with the Minister and receiving an electronic certificate of registration, a single business is given the status of a legal organization. The Minister publishes information on specific businesses that have been granted legal entity status on the official website of the directorate general, which performs tasks and functions related to general legal administration as well as upholds the principle of publicity.

## **2.2. Regulation Regarding the Acquisition of Limited Liability Company Legal Entity Status Before the Enactment of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law**

Historically, the regulation regarding the acquisition of PT legal entity status before the enactment of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law is contained in the KUHD, the Act No. 1 of 1995 concerning Limited Liability Companies and Act No. 40 of 2007 concerning Limited Liability Companies (PT Act).

Article 38 of the Criminal Code stipulates that: *“The deed of the company must be made in authentic form, upon threat of its cancellation. The enterprises are required to register the deed in its entirety along with the attestation obtained by it in the general register provided for it at the clerkship of the District Court in whose jurisdiction the company has its seat, while they are also required to announce it in the State Gazette. All of the foregoing shall also apply to any changes in the terms of its establishment or if the company’s time is extended. The provisions of article 25 apply also in this regard.”* Ratification of the legal entity status of a PT based on Article 38 of the Criminal Code is carried out through the clerkship of the District Court in the jurisdiction where the PT is located.

Article 7 paragraph (6) of Law Number 1 of 1995 concerning Limited Liability Companies stipulates that: *“The Company obtains the status of a legal entity after the Deed of Establishment as referred to in paragraph (1) is ratified by the Minister.”* The minister at that time in question was the Minister of Justice of the Republic of Indonesia.

Similarly, Article 7 paragraph (4) of the PT Law also regulates the same thing, namely that: *“The acquisition of legal entity status for a PT occurs on the date of issuance of the decree of the Minister of Law and Human Rights concerning the ratification of a legal entity.”*

The similarity of the three laws and regulations used is that they both use the term attestation of PT legal entity status and no registration. Where grammatically in the



Great Dictionary of Indonesian Language (KBBI), endorsement and registration have different meanings.

The endorsement comes from the basic word “sah” which in KBBI is interpreted as follows:<sup>10</sup>

1. Carried out under applicable laws (laws, regulations);
2. Not void (about religion);
3. Apply; recognized for its truth; recognized by official parties;
4. Trustworthy; undoubted; true; original; authentic;
5. Real and certain; certainly.

While the word “endorsement” itself has the meaning: “process, method, the act of validating; recognition under the law; Inauguration; justification”.<sup>11</sup>

The phrase “registration” in KBBI is derived from the word “register.” According to the dictionary, a list is “a record of certain names or objects” (such as words, people’s names, items, and so on) that are ordered in a row from top to bottom. Whereas, registration is defined as “the manner, the act, the process of registering; recording of names, addresses, and other information in the list; regarding registering”.

The Research Team infers from the definitions of these two phrases that the word legal or endorsement is more acceptable to use since it is done based on or in accordance with the law. The words register and registration, in contrast, literally have more administrative connotations.

Regarding the legal products of the clerkship of the District Court (PN) and the Ministry to ratify the status of a PT legal entity, as stipulated in Article 38 of the KUHD from the sentence: “ *... in addition to the approval received by it in the public register made available for that purpose in the clerkship of the District Court whose jurisdiction the company has its seat*”, so it seems that despite using the term attestation, the KUHD embodies the attestation mechanism only by recording it in the general register provided for it in the registrar of the District Court where the PT is domiciled. The registration register number and information confirming that the PT has been included in the general register of the PN where the PT is domiciled are actually attached to the Articles of Organization of the PT in dispute. The recording mechanism in the general register of PN, where the PT is located, is a kind of registration without the issuing of a legal product, in line with the Research Team, and serves as a confirmation of the legal entity status of the PT. Again, although it uses the word “attestation,” the KUHD really represents the process of the term’s usage in a manner identical to that of a simple registration.

Although it is clearly and unequivocally regulated that a PT obtains legal entity status after its Deed of Establishment is ratified by the Minister, Law Number 1 of 1995 concerning Limited Liability Companies has a weakness in that it does not clearly and

<sup>10</sup> “<https://Kbbi.Kemdikbud.Go.Id>,” n.d., diakses pada tanggal 30 Oktober 2022.

<sup>11</sup> “<https://Kbbi.Kemdikbud.Go.Id>,”

firmly regulate legal products as evidence of ratification of the legal entity status of the PT. The Research Team claims that there is a legal void here.

During the enactment of the Limited Liability Act, it also stipulates the same thing, namely that: *“The acquisition of legal entity status for a PT occurs on the date of issuance of the decree of the Minister of Law and Human Rights on the ratification of a legal entity.”*

According to the Research Team, the enactment of the PT Law is the time when the regulation governing the acquisition of PT legal entity status is most clearly and unambiguously regulated. According to the Law, *PT acquires legal entity status on the date the Minister of Law and Human Rights issues the decree ratifying legal entities.* The Law has provided clear, firm, and comprehensive regulations regarding who the authorized agency is, how the mechanism is when legal entity status is obtained, and what form of the legal product is evidence of ratification of the PT legal entity status in the context of regulations regarding the acquisition of PT legal entity status.

Regarding the position of the Ministerial Decree as a legal product of laws and regulations, we must first refer to the regulation regarding the type and hierarchy of laws and regulations as stipulated in Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as follows:

- a. Constitution of the Republic of Indonesia Year 1945;
- b. Decrees of the People’s Consultative Assembly;
- c. Law / Regulations in Lieu of Law;
- d. Government Regulations;
- e. Presidential Regulation;
- f. Provincial Regional Regulations; and
- g. District/City Regional Regulations.

From the formulation of the article, the Ministerial Decree is not contained in the type and hierarchy of laws and regulations, but Article 8 paragraph (1) of Law Number 12 of 2011 further stipulates that the types of laws and regulations other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People’s Consultative Assembly, House of Representatives, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board, Judicial Commission, Bank Indonesia, Ministers, agencies, institutions, or commissions at the same level established by Law or the Government by order of the Law, Provincial People’s Representative Council, Governor, Regency/City People’s Representative Council, Regent/Mayor, Village Head or equivalent. And in paragraph (2) it is regulated that the Laws and Regulations as referred to in paragraph (1) are recognized for their existence and have binding legal force to the extent ordered by higher laws or established by authority.

Regarding the difference between the Ministerial Decree and the Ministerial Regulation, the Research Team then gave the following analysis:

*Law Number 12 of 2011 Concerning the Establishment of Laws and Regulations states in*

*Article 1 Point 2 that laws and regulations are written rules that contain legal standards that are generally binding and are created or determined by state institutions or authorized officials following the procedures outlined in laws and regulations.*

Meanwhile, regarding the use of the terms “decisions” and “regulations”, according to **Jimly Asshiddiqie**, the state as an organization of general power can make three kinds of decisions that are legally binding for legal subjects related to these decisions, namely decisions that are general and abstract (general and abstract) are usually *regeling*, While those that are individual and concrete can be decisions that are in the nature or contain administrative determinations (*beschikking*) or decisions in the form of ‘verdicts’ of judges which are usually referred to as judgments.<sup>12</sup>

Therefore, according to Jimly Asshiddiqie, three forms of decision-making activities can be distinguished by the use of the terms “rules”, “decisions/decrees” and “statutes”, according to Jimly these terms should only be used for:<sup>13</sup>

1. The term “regulation” is used to refer to the results of regulatory activities that produce regulations (*regels*).
2. The term “decision” or “decree” is used to refer to the results of administrative decision-making activities (*beschikking*s).
3. The term “judgment” is used to refer to a judgment or court that produces a judgment (*verdict*).

However, as Jimly explains, indeed the use of these terms in practice does not occur in uniformity, for example in referring to “decree” using the term “judge’s decision.”<sup>14</sup> We can infer from Jimly’s justification that the word “choice” has both a broad and specific meaning. It includes the definitions of “rules/*regels*,” “decisions/*beschikking*s,” and “decrees/*verdicts*” in the broadest sense of the word “decision.” In contrast, when used in a limited meaning, the word “decision” refers to the outcome of administrative decision-making activities (*beschikking*s).

Considering the distinction between rules (*regeling*) and decisions (*beschikking*), Jimly Asshiddiqie claims that decisions (*beschikking*) are always individual and concrete (individual and concrete), whilst regulations (*regeling*) are always universal and abstract (general and abstract). In other words, everybody who is susceptible to the formulation of broad procedures is addressed by what is meant, which is generic and abstract.<sup>15</sup>

According to Philipus M. Hadjon, who agrees with Jimly, those legal things that are decided (*beschikking*) have unique and concrete qualities. Whereas legal goods are

12 Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta : Rajawali Pers, 2020).Pg. 9.

13 Jimly Asshiddiqie. Pg. 10.

14 Jimly Asshiddiqie. Pg. 11.

15 Jimly Asshiddiqie, “Hukum Acara Pengujian Undang-Undang,” 2006.Asshiddiqie. Pg. 2.

governed (regelung) by vague and amorphous standards.<sup>16</sup> Furthermore, Maria Farida Indrati S classifies norms from general, individual, abstract, and concrete variables.<sup>17</sup>

In addition, according to Maria Farida Indrati S, a decision (beschikking) is one-time (enmahlig), while the rules (regelung) always apply continuously (dauerhaftig).<sup>18</sup>

Jimly also stated that decision products are challenged through the state administrative court, while regulatory products are tested (Judicial review) directly by the Supreme Court or if for laws are tested by the Constitutional Court.<sup>19</sup>

From the explanations above, a table of differences can be made between decisions and regulations as follows:

Table 1. The Differences between Decision and Regulation

Decision ( <i>beschikking</i> )	Regulation ( <i>regelung</i> )
Always <i>individual and concrete</i>	Always <i>general and abstract</i>
The test is through a lawsuit in the state administrative court.	The test is for regulations under the law (judicial review) to the Supreme Court, while for the law it is tested by the Constitutional Court.
Once-done ( <i>enmahlig</i> )	Continuously ( <i>dauerhaftig</i> )

Source: Secondary legal materials, processed, 2022.

Furthermore, regarding the existence of legal products of generally accepted ministerial decisions, abstract and continuous, Jimly Asshiddiqie, among others, said that indeed at that time in Indonesia there were also ministerial regulations that applied as laws and regulations (regels) that were binding on the public, which were still referred to as Decrees (Ministerial Decrees).<sup>20</sup>

To the ministerial decree that is regels, we must refer to the provisions of Article 100 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations which stipulates that:

*“All Presidential Decrees, Ministerial Decrees, Governor Decrees, Regent/Mayor Decrees, or other official decisions referred to in Article 97 that are regulatory in nature, which existed before this Law came into force, shall be interpreted as regulations, as long as they do not conflict with this Law.”*

Regulations that were made before Law Number 12 of 2011 About the Creation of Laws and Regulations was passed shall be interpreted as regulations by the terms of that law. Article 56 of Law No. 10 of 2004 About the Establishment of Laws and Regulations,

16 Philipus M Hadjon, Sri Soemantri Martosoewignjo, and Sjachran Basah, “Pengantar Hukum Administrasi Indonesia,” 2005. Pg. 119.

17 Maria Farida Indrati Soeprapto, *Ilmu Perundang-Undangan 1: Jenis, Fungsi, Dan Materi Muatan* (PT Kani-sius, 2007). Pg. 50-55.

18 Soeprapto. Pg. 78

19 Asshiddiqie, “Hukum Acara Pengujian Undang-Undang.” *Op. Cit.*, Pg. 28.

20 Asshiddiqie. *Op. Cit.*, Pg. 11.



which has been abolished and deemed ineffective by Law No. 12 of 2011 Concerning the Establishment of Legislations, likewise regulates such clauses.

For instance, the Adoption of Good Corporate Governance Practices in State-Owned Companies Decree of the Minister of State-Owned Enterprises Number Kep-117 / M-MBU / 2002 of 2002 (SOEs). An example of a ministerial decree that was governing before Law Number 10 of 2004 is the Ministerial Decree. The Minister of State-Owned Enterprises' Regulation Number PER-01 / MBU / 2011 the Year 2011 concerning the Implementation of Good Corporate Governance in State-Owned Companies, which went into force on August 1, 2011, however, deemed the Ministerial Decree to be ineffective.

### **2.3. Regulation Regarding the Acquisition of Limited Liability Company Legal Entity Status After the Enactment of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law**

Regulations governing PT's acquisition of legal entity status have changed after the passage of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law. After the passage of the Job Creation Law, the acquisition of PT legal entity status occurs after being registered with the Minister and obtaining proof of registration, as specified in Article 109 number 2 of the Job Creation Law. If, as stated in Article 7 paragraph (4) of the PT Law, the acquisition of legal entity status for a PT occurs on the date of issuance of the decree of the Minister of Law and Human Rights of the Republic of Indonesia concerning the ratification of a legal entity.

It appears that the two laws and regulations (the PT Law and the Job Creation Law) have different restrictions because of two different factors. The first difference is in the terminology; the Job Creation Law uses the word registration of legal entity status, but the PT Law uses the term ratification of legal entity status. The Research Team has examined the grammatical differences between the terms in the preceding sub-chapter.

The second distinction has to do with the design of legal products that serve as proof that the PT has been recognized as a legal organization. It is expressly stated in the PT Law that the Decree of the Minister of Law and Human Rights of the Republic of Indonesia on the ratification of legal entities is the legal product in question. Nevertheless, the Job Creation Law merely refers to "evidence of registration" and does not govern the format of legal documents used to describe the status of Limited Liability Corporation legal entities. Of course, this causes the arrangement to become hazier. Even though the legal product designed for Capital Guild PT really remains in the form of a Decree of the Minister of Law and Human Rights of the Republic of Indonesia concerning the ratification of legal entities.

The stages of ratification of legal entity status and its announcement are governed by Government Regulation Number 8 of 2021 concerning the Company's Authorized

Capital and Registration of Establishment, Change, and Dissolution of Companies that meet the Criteria for Micro and Small Enterprises, specifically for individual companies, in Article 6 paragraphs (3) and (4). By registering with the Minister and receiving an electronic certificate of registration, a single business is given the status of a legal organization. Here, it appears that the legal document, which takes the form of a Certificate of Registration of Formation of an Individual Company, describes how an Individual Company differs from a capital partnership PT in terms of its legal position.

Ministerial Decrees and certificates are different types of legal products, even though both are available and issued by the same agency and for the same purpose, namely explaining the status of a person. This difference in their use as proof of registration by the Ministry of Law and Human Rights of the Republic of Indonesia shows the inconsistency of the regulation between the Job Creation Law and its implementing regulations. KBBI defines a certificate as: *“a written or printed sign or statement from an authorized person that can be used as proof of ownership or an incident.”*<sup>21</sup>

#### **2.4. Fulfillment of the principle of clarity of formulation in the formation of good laws and regulations regarding the acquisition of legal entity status of limited liability companies in Article 109 number 2 of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law**

According to Article 5 letter F of Law Number 12 of 2011, the drafting of laws and regulations must follow specific principles, one of which is the notion of formulation clarity. The “principle of clarity of formulation” states that each item of legislation must comply to technical requirements for drafting laws and regulations in a systematic way with the appropriate wording to promote comprehension and prohibit different interpretations at the same time.

The use of the term “proof of registration” in Article 109 Number 2 of Job Creation Law as a type of legal product, which is a proof of registration of the status of a legal entity of PT, will be examined in the following to see if it complies with the principle of formulation clarity.

Once again, the Research Team will perform grammatical interpretation by describing the phrase “proof of registration,” which consists of 2 (two) words, namely “evidence” and “registration,” to analyze what is meant by “proof of registration” as it is referred to in Article 109 Number 2 of Job Creation Law.

KBBI defines “evidence” as 1 something that verifies the veracity of an occurrence; a true description, a warning, and 2 indicators of bad conduct.<sup>22</sup>

While the term registration comes from the word register, the word “list” itself is defined as: “a record of several names or things (about words, names of people, goods,

21 [“https://Kbbi.Kemdikbud.Go.Id,”](https://Kbbi.Kemdikbud.Go.Id,)

22 [“https://Kbbi.Kemdikbud.Go.Id,”](https://Kbbi.Kemdikbud.Go.Id,)

and so on) arranged in a row from top to bottom.”<sup>23</sup> And the word registration is interpreted as: “1 process, way, the act of registering (registering); recording of names, addresses, etc. in the list; 2 about registering.”<sup>24</sup>

The phrase “proof of registration” can further be interpreted as: “something that states the truth of an event; real description; marks on a process, manner, act of registering (registering); recording of names, addresses, and so on in the list, in this case, is the list of PT legal entities in the database of the Ministry of Law and Human Rights of the Republic of Indonesia.

According to the Research Team, it is still unclear what is meant by “proof of registration” in terms of its actual form since the phrases or concepts used, “proof of registration,” are still too general. In its application, the scope of meaning undoubtedly lends itself to a variety of interpretations.

Additionally, the Writing Team claims that the legal language used, specifically the term “proof of registration,” is ambiguous and challenging to understand. This is because, as was discussed in the previous subchapter, the term “endorsement” is more appropriate because it is carried out under or based on the law. The meaning of the words registers and registration, in contrast, is more plainly administrative. Thus, the registration procedure shouldn’t merely be a formal administrative one.

According to the Research Team, the phrase “proof of registration” is used in a law that, in terms of formulation, does not adhere to the concept of formulation clarity because the phrases or terms used are confusing and difficult to grasp, leading to a variety of implementation interpretations. The Ministry of Law and Human Rights of the Republic of Indonesia issued a legal product of laws and regulations in the context of registering the status of a legal entity PT to carry out Law Number 11 of 2020 concerning Job Creation, which was repealed by Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation which has been into Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law (Job Creation Law), in the form of a Ministerial Decree approving the formation of the Limited Liability Companies as a legal entity.

However, in the technical context of the creation of laws and regulations, Article 109 Number 2 of Job Creation Law, which uses the term “proof of registration,” does not adhere to the principle. This is true even though in practice the Ministry of Law and Human Rights of the Republic of Indonesia issued a legal product in the form of a Ministerial Decree concerning the “ratification” of the establishment of a PT legal entity. Similar distinctions exist between the regulations that implement the Job Creation Act and Individual Companies. For instance, Government Regulation Number 8 of 2021’s Article 6 Paragraphs (3) and (4), which deal with the Company’s authorized capital and

<sup>23</sup> “<https://kbbi.kemdikbud.go.id>,”

<sup>24</sup> “<https://kbbi.kemdikbud.go.id>,”

the registration of the establishment, change, and dissolution of businesses that meet the requirements for Micro and Small Enterprises, state that Individual Companies acquire legal entity status after being registered with the Minister and that Individual Companies must comply with the Job Creation Act. Here, it appears that the legal document, in the form of a Certificate of Registration for the Creation of an Individual Business, clarifies how an Individual Company differs from a capital partnership of a Limited Liability Corporation in terms of its legal standing.

## **2.5. Proper legal reconstruction in the regulation regarding the acquisition of Limited Liability Company Legal Entity Status**

According to the Great Dictionary of Indonesian Language (KBBI), construction is: “the arrangement (model, layout) of a building (bridge, house, and so on).”<sup>25</sup> While reconstruction is: “return as before”. If the construction of Law is a way of filling the void of legislation with legal principles and joints,<sup>26</sup> legal reconstruction can be interpreted as the process of rebuilding or recreating, or reorganizing the existing legal structure, legal substance, and legal culture to be better and function as it should.

The legal construction is carried out if several things occur as follows:<sup>27</sup>

1. There are no statutory provisions that can be applied to the case;
2. In its regulations there is none;
3. There is a legal vacuum or *recht vacuum*;
4. There is an Act vacuum or *wet vacuum*.

So, there is no need for legal reconstruction because there are already laws and regulations in place; rather, what is required is a process of improving and restructuring the current legal structure, legal substance, and legal culture.

As the Research Team analyzed in the preceding subsection, Article 109 Number 2 of Job Creation Law, which uses the term “proof of registration,” does not meet the principle of clarity of formulation due to the choice of words or terms, and the legal language is unclear and difficult to understand, leading to various kinds of interpretations. According to the Research Team, the formulation of the article in this instance has to be reconstructed in such a legal substance that it improves, performs as it should, and, of course, complies with the formulation principle of clarity.

Regarding legal language and grammatical rules used in the formation of Indonesian laws and regulations, they are subject to Indonesian rules. This is under the sound of Number 242 Annex II of Law Number 12 of 2011 which states that:

*The language of laws and regulations are basically subject to the rules of Indonesian, both word formation, sentence construction, writing techniques, and spelling. However, the lan-*

<sup>25</sup> “<https://Kbbi.Kemdikbud.Go.Id.>,”

<sup>26</sup> Enju Juanda, “PENALARAN HUKUM (LEGAL REASONING,” *Jurnal Ilmiah Galuh Justisi* 5, no. 1 (2017): 157–167, <https://doi.org/http://dx.doi.org/10.25157/jigj.v5i1.316>.

<sup>27</sup> Muwahid, “Metode Penemuan Hukum (Rechtsvinding) Oleh Hakim: (Sebuah Upaya Untuk Mewujudkan Hukum Yang Responsif),” *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 7, no. 224–248 (2017): 1, <https://doi.org/https://doi.org/10.15642/al-hukama.2017.7.1.224-24>.



*guage of laws and regulations has its pattern which is characterized by purity and clarity of understanding, straightforwardness, standards, compatibility, and basic compliance under legal needs both in formulation and writing methods.*

Number 243 of Annex II of Law Number 12 of 2011 also provides instructions for drafters of laws and regulations related to the characteristics of the language of laws and regulations, namely:

The characteristics of the language of laws and regulations include:

- a. Straightforward and certain to avoid similarity of meaning or confusion;*
- b. Frugally styled only the necessary words are used;*
- c. Objective and suppress subjective sense (not emotion in expressing goals or intentions);*
- d. Standardize the meaning of words, expressions, or terms used consistently;*
- e. Provide a careful definition or limitation of understanding;*
- f. The writing of words with singular or plural meanings is always formulated in the singular; and*
- g. Writing the initial letters of words, phrases, or terms that have been defined or given limits on understanding, position names, professional names, names of government / constitutional institutions, types of laws and regulations, and draft laws and regulations in the formulation of norms written in capital letters.*

As a whole, Chapter III Appendix II of Law Number 12 of 2011 provides various directions for compiling sentences, the use of words and phrases, the selection of terms, and reference techniques for formulating provisions in laws and regulations.

The use of language in the creation of laws and regulations has also been questioned theoretically by linguists as well as law and regulation drafters. For instance, Maria Farida Indrati S cited A. Hamid S. Attamimi in stating that linguists may wonder whether the language used in law is different from the language in general.<sup>28</sup> In reality, we may have also heard the phrase “legal jargon” used to describe the concept. In actuality, linguists contend that there is no discernible difference between the language used to create laws and regulations and the language at large, making the name “legal language” inappropriate.

What distinguishes “legal language” more precisely is the language model or language barrel. Junaiyah H. Matanggui stated that the language used in the field of law and legislation uses certain terms, vocabulary, and delivery styles that are to the needs and customs that apply in the field of law, in each field there are their peculiarities, for example in the fields of medicine, education, agriculture, engineering, or aviation, all have the peculiarities of the barrel but are still subject to the rules of language in general.<sup>29</sup>

According to Junaiyah, Indonesian in the field of law must meet the following requirements:<sup>30</sup>

<sup>28</sup> Maria Farida Indrati S, *Ilmu Perundang-Undangan II : Proses Dan Teknik Penyusunan* (Yogyakarta : Kanisius, 2020). Pg. 253.

<sup>29</sup> Junaiyah H Matanggui, *Bahasa Indonesia Untuk Bidang Hukum Dan Peraturan Perundang-Undangan* (Bhuana Ilmu Populer, 2022). Pg. 1

<sup>30</sup> Matanggui. Pg. 8-26.

1. The form of the word must be correct;
2. The meaning of the word must be precise;
3. Sentences must be clear, correct, and precise;
4. Sentences do not have a double meaning;
5. There is a distinctive use of terms;
6. Writing follows the Spelling of Indonesian.

Ann Seidman and Robert B. Seidman in the book *Legislative Drafting for Democratic Social Change: A Manual for Drafter* state the success of a drafter to draft a legislative sentence is seen by how easily the sentence is understood by the intended party or institution appointed to implement the provision. The sentence that is easy to understand will eventually be easy to implement. Therefore, the sentences used in laws and regulations must contain at least “who does what” i.e. “who does what”. The “who” element refers to the subject or address of the intended party to do something, while the “what” element is the behavior that is commanded to that party.<sup>31</sup>

The Research Team cites Article 7 paragraph 4 of the PT Law, which states that “The acquisition of legal entity status for a PT occurs on the date of issuance of the decree of the Minister of Law and Human Rights concerning the ratification of a legal entity,” to adhere to the principle of clarity of formulation. According to the Research Team, the laws governing the acquisition of PT legal entity status are most clearly and firmly controlled at the time after the passage of this PT Law. According to the law, a PT acquires legal entity status on the day the Minister of Law and Human Rights issues the decree ratifying a legal entity. The Law has provided clear, firm, and comprehensive regulations regarding who the authorized agency is, how the legal entity status is obtained, and what form of the legal product is proof of ratification of the legal entity status of the PT, namely in the form of a Ministerial Decree, in the context of regulations regarding the acquisition of PT legal entity status.

Based on the foregoing, the Research Team concluded that to carry out proper legal reconstruction in the regulation regarding the acquisition of PT legal entity status is to amend Article 109 Number 2 of Job Creation Law which changes the provisions of Article 7 paragraph (4) of the PT Law to the following: “*The company obtained legal entity status after being registered with the Minister and obtaining proof of registration.*” To be amended again as originally as stipulated in Article 7 paragraph (4) of the previous PT Law, which is as follows: “*The acquisition of legal entity status for a PT occurs on the date of issuance of the decree of the Minister of Law and Human Rights on the ratification of a legal entity.*” This is to fulfill the principle of clarity of formulation in the formation of laws and regulations.

### 3. CONCLUSION

<sup>31</sup> Ann Seidman, Robert B Seidman, and Nalin Abeyesekere, *Legislative Drafting for Democratic Social Change* (Kluwer Law International BV, 2001). Pg. 233-234.

The regulation regarding the acquisition of Limited Liability Company Legal Entity status in Article 109 Number 2 of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law, which uses the term “proof of registration,” does not meet the principle of clarity of formulation due to the choice of words or terms, and the legal language is ambiguous and difficult to understand, which is contrary to the spirit of the law, resulting in a variety of perspectives in its application. So, in this instance, the article’s formulation needs to be reconstructed in such a way that it has legal substance, improves, performs as it should, and, of course, complies with the concept of formulation clarity.

The proper legal reconstruction in the regulation regarding the acquisition of PT legal entity status is to amend Article 109 Number 2 of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law which changes the provisions of Article 7 paragraph (4) of the PT Law to the following: “*The Company obtains legal entity status after being registered with the Minister and obtaining proof of registration.*” To be amended again as originally as stipulated in Article 7 paragraph (4) of the previous PT Law, which is as follows: “The acquisition of legal entity status for a PT occurs on the date of issuance of the decree of the Minister of Law and Human Rights on the ratification of a legal entity.” This is to fulfill the principle of clarity of formulation in the formation of Statutory Regulations.

To fulfill the principle of clarity of formulation, lawmakers should make changes to Article 109 Number 2 of Law Number 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to Become Law. Lawmakers should always pay attention to the principle of clarity of formulation because adherence to this principle is a condition for the formation of good legislation (beginselen van behoorlijke wetgeving).

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