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LEGAL CERTAINTY ON THE LEGALITY OF ESTABLISHMENT OF LIMITED COMPANY BASED ON FAIRNESS OF PANCASILA

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ABSTRACT

When a man and a woman who are both legal subjects are married, there are legal ramifications. Property rights are among the effects of marriage legally speaking. Articles 35 and 36 of Law Number One Year 1974 Concerning Marriage (henceforth referred to as UUP), which declare that assets in marriage are divided into two categories: personal assets or assets, and shared assets, provide an important point. Personal assets or inherited assets are any assets acquired by the husband or wife before to their marriage, including those obtained as gifts or inheritances. The husband and/or wife's assets acquired while they were married are regarded as joint assets. The husband or wife may act alone with regard to personal property, but they may not act jointly without the other's approval with regard to joint property. The results of this study indicate that a married couple's Limited Liability Company is legitimate as a legal entity since it complies with the requirement of Article 1 number 1 of the Law on Limited Liability Companies that it be created by at least 2 (two) people. This only holds true for the husband and wife's intrinsic assets (assets acquired before marriage, including inheritance, grants, and gifts), whereas joint assets (assets acquired after marriage, excluding inheritance, grants, and gifts) from the husband and wife can only be utilized to form a limited liability corporation if a marriage agreement has been formed.

KEY WORDS

Nature, limited liability company, law regulations.

Five (5) tenets, foundations, or concepts make up Pancasila pursuing social justice for all Indonesians in accordance with precept 1, with the goal of realizing precept 5. Every society has a legal ideal, or what it expects from the law in terms of order, prosperity, and fairness (*rechtsidee*). The law, one of the instruments for achieving objectives, particularly the fifth (five) precepts, is intended to embody this value system, both as a means of defending values and as a means of making values manifest in people's behavior. Therefore, the legal precepts of the Pancasila should be followed in any legal formation or statutory creation. As a result, "debate over the meaning of the philosophy of making laws and regulations will always be related to a life philosophy (Pancasila), legal awareness, lofty moral standards, and the character of an Indonesian nation, which exist in Pancasila. This political framework of national legislation in Indonesia, which must always lead to the nation's ambitions, namely the fulfillment of a Pancasila-based just and prosperous society, is inextricably linked to this intellectual foundation (Pancasila). In order to accomplish objectives and reach goals using these tenets and ideas, Pancasila is a legal system that includes or blends a variety of interests, social values, and the concept of justice into one prismatic legal bond. The idea of welfare was outlined in Ir. Sukarno's renowned June 1, 1945 speech: "There will be no poverty in independent Indonesia. Muhammad Hatta highlighted collectivism as the basis of the economy in response to this idea. Supomo considered the notion of collectivism and the welfare principle when drafting the Constitution. This idea later developed into the Pancasila doctrine's Fifth Precept, which stands for social fairness for all Indonesians. The Preamble to the Republic of Indonesia's 1945 Constitution also mentions this idea. The Republic of Indonesia's 1945 Constitution's Preamble states that the state is in charge of protecting the entire Indonesian country from all forms of violence, advancing the



general well-being, and educating the populace. It is crucial to carry out sustainable national economic growth based on economic democracy while maintaining focus on defending the entire nation and the entire Indonesian homeland in order to advance the aforementioned public welfare. The hope for the existence of an enlightened Indonesian country is the realization of wealth and prosperity.

The state must provide a business environment that takes into account both Indonesian and global trends in order to support the community's demand to conduct business. Internal changes have a direct impact on Indonesia's economic and governmental changes. Although a number of bilateral, regional, and multilateral free trade agreements are closely related to global developments. The closest implementation is the agreement to create the ASEAN Economic Community, sometimes known as the ASEAN Economic Community (AEC). The business climate, according to the Ministry of Industry, is the first step in establishing the country's industrial competitiveness. The government develops policies based on a number of important factors, including infrastructure, business certainty, bureaucratic services, quality of people and worker resources, and fiscal facilities, in order to create and maintain a positive industrial business climate. One effort to promote a business-friendly atmosphere is the simplicity of founding a firm. A nation's economic vitality depends heavily on entrepreneurs, and Indonesia needs more of them. According to economists, a country needs at least 2% (two percent) of its total population to be entrepreneurs in order to be prosperous. Several industrialized countries, like Japan and Singapore, have shown this. For instance, 20% of enterprises in Japan are medium-sized and small, but 2% of the population as a whole are major entrepreneurs. Of Singapore's 40,000,000 (forty million) residents, 7% (seven percent) are business owners. While there are only about 450,000 (four hundred fifty thousand) entrepreneurs in Indonesia, which has a population of over 230,000,000 (two hundred thirty million), or just 0.18 percent of all existent individuals.

Clothing, food, and shelter are society's three basic needs. Separately operating some enterprises is one way to satisfy these requirements. According to the fourth paragraph of the Republic of Indonesia's 1945 Constitution, meeting the basic needs of the community will unintentionally advance the welfare of everyone, enabling the nation's economy to grow sustainably and on the basis of economic democracy. Economic democracy in national development is carried out in accordance with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, and independence, and by maintaining a balance between progress and national economic unity, as stated in Article 33, subsection (4) of the 1945 Constitution of the Republic of Indonesia. The Republic of Indonesia's 1945 Constitution stipulates in Article 33, paragraph 1 that "The economy is structured as a cooperative venture based on the principle of kinship." The explanation in this article reads: "Economic democracy is established by Article 33 of the Republic of Indonesia's 1945 Constitution. Production is carried out by everyone for all under the direction or authority of community members. Individual wealth is not more important than societal well-being." As a result, the economy is envisioned as a cooperative enterprise founded on the idea of kinship. Additionally, economic democracy and prosperity for all lay the foundation of the economy. Since these industries are vital to the state and have an impact on people's lives, the government must oversee them. If not, those in authority and the numerous people they oppress will take control of the production. Only businesses that do not affect many people's lives can be controlled by one person. Investment policies must always support a people's economy that promotes the growth of micro, small, medium, and cooperative businesses, according to Decree XVI/MPR/1998 of the People's Consultative Assembly of the Republic of Indonesia on Economic Politics within the Framework of Economic Democracy.

Article 33 of the Republic of Indonesia's 1945 Constitution states that corporate activity can promote economic initiatives that result in the development of a thriving society. A key step in the process of launching a business is selecting the type of enterprise. Business continuity, contribution to business earnings, and amount of business risk are only a few of the variables to take into account when choosing a business structure. Every company wants to maximize profits, and this goal is determined by how viable the company is. For example, creating a limited liability corporation is more legal than using other business forms.



According to Article 1 of Law Number 40 of 2007 about Limited Liability Companies, PT is a capital partnership that was founded based on an agreement, performing business activities with allowed capital that is wholly divided into shares, and meeting the standards set forth in this Law and its implementing regulations. It must be established by two or more people with a document in Indonesian that has been notarized. In his justification, the term "person" applies to a person, whether they are an Indonesian or a foreign citizen, as well as an Indonesian or foreign legal entity. The clause's requirements emphasize the general rule that Limited Liability Company Law Number 40 of 2018 applies, which is that a company must be created by two other legal entities (other than PT Go Public) or based on an agreement if it has more than one shareholder. According to Law Number 40 of 2018 regarding Limited Liability Companies, the number of founders of a limited liability company must be at least 2 (two). Establishing a business has a closed aspect, which can be interpreted as the founders being mostly members of their own family or a married couple who have strong familial ties. As long as the founder is an adult who is at least 18 years old, there is no problem if the connection is restricted to being familiar. However, there will be a problem if the founders are just husband and wife because Law No. 1 of 1974 Governing Marriage governs who controls their marital assets.

Legal repercussions for both parties are involved when two legal subjects, typically a man and a woman, are married. Marriage property is one of the legal effects. The Law No. 1 of 1974 concerning marriage (hereafter referred to as UUP Articles) 35 and 36 make clear a critical fact, namely that marital assets are split into two categories: shared assets and personal assets. Any assets obtained by the husband or wife before to marriage—including gifts and inheritances—are considered inherited or personal assets. All possessions acquired by the husband and/or wife while they were married are regarded as joint possessions. The husband and wife can act individually when it comes to personal property, but they must collaborate when it comes to joint property.

In essence, the husband or wife can diverge from the requirements of joint property by abolishing it, making all assets obtained after the marriage the property of and under the jurisdiction of each party for the duration of their marriage or permanently. Property unions during marriage can be eliminated by putting a marriage contract into action. This explanation makes it evident that there is legal ambiguity in Article 7 Paragraph 1 of the Limited Liability Company Law. The minimum number of individuals needed to create a limited liability company is two (two), as stated in Article 7 paragraph (1) of the limited liability company law. However, Article 7 paragraph (1) of the Limited Liability Company Law leaves room for interpretation about the status and position of "persons", notably in the event of the founder of a capital partnership Limited Liability Company with a union of assets and separation of assets: founders both husband and wife if there is no preexisting marriage contract between husband and wife; the founders are a husband and wife on the condition that a third person or more is recognized as a founder or shareholder of the company.

Despite the fact that marriages with separate or merged assets have various repercussions, none of these three interpretations are specifically prohibited by laws and regulations; rather, they are merely permitted or prohibited interpretations. One of the results of the union of assets in marriage to transfer immovable goods, including securing the consent of the spouses and vice versa, is the creation of a Limited Liability Company by a husband and wife. This draws attention to the problem of legal certainty in a Limited Liability Company's basis based on the Pancasila ideals of fairness.

RESULTS AND DISCUSSION

According to Gustav Radbruch, three (three) principles—justice (gerechtigheid), expediency (zweckmatigheid), and legal certainty—are the fundamental components of law. These principles are afterwards defined by jurists as the goals of law (rechtmatigheid). According to Gustav Radbruch, one of the goals that can be reached by the establishment and application of law in people's lives—in this case, the life of the country and state—is the achievement of legal certainty. Legal certainty is sometimes seen as a need in which the law



is formulated for the state's residents in a straightforward, unambiguous manner that does not raise questions about how it should be applied. Legal certainty is also reached when laws are created sustainably, in accordance with the fundamental rules, and when their drafting and evolution are linked in a way that avoids conflict. In the subject of law, a positivist school of thought that holds the belief that law is nothing more than a system of rules tends to consider law as autonomous and independent. This school of thinking holds that the creation of legal certainty is the only purpose of law. A general rule of law is that there must be legal certainty because of the nature of the law. Legal principles' general nature proves that clarity, not justice or advantage, is the law's primary goal. Jan M. Otter also expressed comments on legal certainty, noting that, in some cases, legal certainty requires: According to Gustav Radbruch, the three (three) principles of justice (gerechtigheid), expediency (zwechmatigheid), and legal certainty are the fundamental elements of law. These three principles are then translated by legal experts as the goals of law (rechtmatigheid). According to Gustav Radbruch, one of the goals that can be reached by the establishment and application of law in people's lives—in this case, the life of the country and state—is the achievement of legal certainty. Legal certainty is sometimes seen as a need in which the law is formulated for the state's residents in a straightforward, unambiguous manner that does not raise questions about how it should be applied. Legal certainty is also reached when laws are created sustainably, in accordance with the fundamental rules, and when their drafting and evolution are linked in a way that avoids conflict. In the subject of law, a positivist school of thought that holds the belief that law is nothing more than a system of rules tends to consider law as autonomous and independent. This school of thinking holds that the creation of legal certainty is the only purpose of law. A general rule of law is that there must be legal certainty because of the nature of the law. Legal principles' general nature proves that clarity, not justice or advantage, is the law's primary goal. Jan M. Otto shared his viewpoint on legal certainty, saying that in particular situations, it is necessary for:

- There are laws that have been issued by the state power that are obvious, obvious, consistent, and simple to access;
- that governmental bodies continuously uphold, obey, and adhere to the law;
- While the majority of citizens generally concur with the rules' principles and conform to them in their actions;
- Whereas unbiased and impartial judges (judiciary) regularly implement these laws when they adjudicate legal conflicts;
- That the court's decision is concretely implemented.

The five criteria outlined by Jan M. Otto show that legal certainty can be obtained if the law's core provisions meet societal needs. A rule of law that derives from and reflects the culture of the society is one that can create legal certainty. True legal certainty, also known as realistic legal certainty, is the term used to describe this kind of legal certainty, which necessitates the cooperation of the state and the citizens in order for them to understand and navigate the legal system. What if Pancasila-based Legal Certainty formed a limited liability company?

The law, one of the instruments for achieving objectives, particularly the fifth (five) precepts, is intended to embody this value system, both as a means of defending values and as a means of making values manifest in people's behavior. Therefore, the legal precepts of the Pancasila should be followed in any legal formation or statutory creation. Paragraph 1 of Article (1) Founded on the basis of an agreement, UUPT is a Limited Liability Company (Company) that complies with the requirements outlined in this Law's provisions and its implementing regulations. The Company conducts commercial activities with an authorized capital that is wholly divided into shares. Limited Liability Company (PT) was once known as Namloze Vennotschap, which stands for Namloze Vennotschap. How can it be referred to as a PT if its origins are unknown? The general public, the corporate world, and several laws and regulations have always used this word. The phrase is used in Law No. 40 of 2007's provisions on PT. PT is made out of the words corporation and limited. The name "company" means that the PT's capital consists of shares, also referred to as stock. Therefore, the



shareholders' duty, which is restricted to the value of their shares, is the limiting definition of PT.

However, the author's interpretation that a Limited Liability Company refers to the capital of the company's founders, which is then granted the status of a legal entity by law, as stated in the 2007 UUPT specifically in Article 1 paragraph 1, which reads as follows: "Limited Liability Company is a legal entity that is a capital partnership, established based on an agreement, and conducts business activities with authorized capital that is entirely divided into Shariah". Limited shareholder liability is defined in Article 3 of the Company Law as follows: "Shareholders of the Company are not personally liable for obligations made on the Company's behalf and are not liable for the Company's losses beyond the value of the Shares they own." PT is defined as a legal entity that is a capital partnership that was created based on an agreement and participates in business operations with permissible capital that is entirely divided into shares in Article 1 Point 1 UUPT. A Limited Liability Company is a Legal Entity, which means that a PT has the rights and obligations to conduct out legal actions like persons, is what is meant by a Limited Liability Company as a legal entity, according to the definition that was just given. Examples of the idea of a limited liability company as a legal entity (Legal Personality) include the following: A legal entity is a human building or engineering, according to the legal personality as legal person notion. Positive legal norms serve as the foundation for a legal entity's ability, enabling the state to identify and safeguard its identity. Business realism, this perspective holds that the creation of a legal entity based on statutory regulations results in the legal personality of the entity being derived from a reality rather than being generated by the incorporation process. The Zweckvermogen hypothesis states that a legal entity is made up of various assets that are used for particular purposes. This legal entity is merely a name and a symbol for corporate stockholders, according to the principle of aggregation. Legal entities can engage in legal activities including signing contracts, uniting with other businesses (mergers), buying and selling, etc. since they are considered to be legal subjects similar to people in the law. A legal entity is recognized as a defender of rights and obligations when it engages in legal commerce. Nothing more than a human-made body devoid of a soul may be considered a legal entity. Consequently, the management or members of the legal entity represent it in its legal acts.

According to the Limited Liability Company, it is irrelevant to it what the stockholders' personal characteristics are in PT. An explanation of PT is given as an association that does not respect the personal attributes of its shareholders in order to distinguish it from other business entities like civil partnerships. When two or more people who are acquainted with one another, such as longtime friends who can be trusted, form a civil partnership, including businesses and limited partnerships. The PT's main goal is to generate as much money as is practical within the time frame specified in its articles of incorporation. As long as the capital stipulated in the articles of incorporation (at a particular amount/nominal) may be satisfied, PT does not care who invests in the company.

The PT was established in accordance with an agreement because, as stated in Article 1 Point 1 of the UUPT, "PT is a legal body constituted on the basis of an agreement." This rule mandates that the terms and conditions established in the Law of Agreement must be followed while establishing a PT. The regulations specified in the Company Law and the standards outlined in the contract law must both be followed while founding a PT. As a result, since PT is considered to be a legal body, the Civil Code requirements of the agreement must be followed in its establishment. If the agreement is determined to be unlawful, monopolistic behavior will result from its implementation. Prohibited agreements are more closely scrutinized than other prohibitions due to the high number of monopolistic practices that emerge from violations in the form of agreements. Limited Responsibility Businesses operate in order to make money, hence PT is required to conduct business operations. The goal of a PT is to produce profit or benefit for oneself because a PT is a capital partnership. PT needs to do business action in order to accomplish this goal. The UUPT mentions company operations, in contrast to the KUHD, which only mentions firm management. Shares make up the permissible capital, whereas the legal entity's initial capital comes from



the founder's personal wealth. Regardless of the founder's wealth, the starting money belongs to the legal company. Therefore, a legal entity like a PT's separate assets—more particularly, the separate assets of the legal entity's founders—are one of its main characteristics. The UUPT's Article 31, Section 1 states: "The total nominal value of the company's shares makes up its capital. The whole value of the company's allowed shares is known as authorized capital (also known as maatschappelijk capital, approved capital, or nominal capital). A limited liability corporation must be created by at least two individuals in accordance with Article 7 Paragraph 1 UUPT. A PT must be formed according to the laws' established processes because doing so is a legal act. Article 7 UUPT, which is the rule governing this method, states: "Each founder of the company was required to participate in shares at the time the company was created, and the firm was founded by 2 (two) or more people with a notary deed prepared in Indonesian. When consolidating, the provisions mentioned in letter b do not apply; Immediately following the company's legal establishment and when there are no longer more than 2 (two) shareholders; If the time period mentioned in letter d has passed and there are fewer than two permanent owners, the shareholder is personally responsible for all obligations and losses of the company, and the district court may dissolve the company at the request of interested parties; Firms that run stock exchanges and whose shares are entirely controlled by the state are exempt from the provisions requiring companies to be founded by two or more people. The founders must make sure the following details are accurate while writing the Deed of Establishment: Complete information on the founders of the company as per the KTP, together with "Company name (at least three names of firms you seek to establish);" domicile location and full address of the business; information regarding shareholders and the amount of issued and paid-in capital; the amount of the company's permitted capital; objectives for the commercial sector; details on the Directors and Commissioners organizational structure of the company management; If the company's establishment is allowed, include a power of attorney, the KTP of the company's founders, and the NPWP of the management." A PT also needs articles of organization, which must contain the information listed below: "Name, address, and business operations of the company; Goals and objectives of the corporation; the time frame in which the business was formed; the sum of authorized, issued, and paid-in capital; The total number of shares, each share's classification, the rights attached to it, and, if appropriate, the nominal value of each share job title, number of Commissioners and Board of Directors members; procedures for commissioners and board of directors members to be appointed, replaced, and removed; the processes for using profits and distributing dividends. The Notary will make a copy of the budget based on the details and guidelines given by the founder or his legal counsel. Due to their importance to society, legal entities are themes that are shaped by the law. But the organs of this legal entity give it a substantial aspect. The General Meeting of Shareholders (GMS), the Board of Directors, and the Commission are the organization's recognized organs. The General Meeting of Shareholders (hence referred to as the GMS), the Board of Directors, and the Board of Commissioners are the three organizational bodies of the company. Each has certain powers and duties. The conceptual underpinning for the limited liability company section will be discussed in relation to the definition of a limited liability company and the functions and duties of the PT. This is to understand the PT and its organs as complicit in acts both within and outside of courts.

Legal entities can have assets, rights, and obligations just like people do. Even if they are accepted as legal objects, legal entities are nonetheless separate from people. Individual people are capable of carrying out their tasks, whereas legal entities need human administrators to carry out their duties.

A capital partnership effectively combines numerous capitals that belong to different people or groups. As a result, in the context of capital union, the owner of the capital is more important than the total amount of capital collected. For example, if Rp 1,000,000,000 (one billion rupiah) is raised to fund a business but only one person owns it, then this amount of money can only be referred to as capital. However, if Rp 500,000,000 (five hundred million rupiah) is raised to fund a business but the money is raised from several people who own the money, then this amount of money can be referred to as equity. Therefore, it can be



"considered" that a husband and wife have divided a portion of their joint assets into the property of each as capital from the company when a husband and wife establish a PT and the capital of the founders is listed with a predetermined amount in the company's articles of association.

A PT constituted by a married couple is valid as a legal entity under Article 1 Point 1 of the Company Law because it was created by a minimum of two (two) people. This is only applicable to the husband and wife's innate assets (assets acquired prior to the marriage, including gifts, inheritances, and grants), whereas joint assets (assets acquired post-marriage but not including gifts, inheritances, or grants) from the husband and wife can only be used to establish a PT if there is a marriage agreement. This is because the status of the asset division would have an impact on the responsibilities that the husband and wife have for the PT that they co-founded without a marriage contract. The UUPT's Article 7 Paragraph 1 will now read as follows: "The notary deed was written in Indonesian and signed by two or more people to form the company. The focus on the meaning of this capital union, the author will add in his explanation, "is not on the overall amount of capital collected, but rather on the owner of that capital." The statement "Husband and wife can establish a PT with their own assets (inheritance, grants, and gifts) without a prenuptial agreement" will also be included. Moreover, the following "Only shareholders are allowed, and the husband and wife must name a third party or parties to run the PT. This is done to ensure that, in accordance with Article 3 paragraph (1) UUPT, the husband and wife are not personally liable for the agreements made on the company's behalf or for any losses that the company suffers that exceed the number of shares they own.

CONCLUSION

Five (5) tenets, foundations, or concepts make up Pancasila pursuing social justice for all Indonesians in accordance with precept 1, with the goal of realizing precept 5. Every society has certain legal aspirations, or expectations for the rule of law, such as peace, prosperity, and justice. The law, one of the instruments for achieving objectives, particularly the fifth (five) precepts, is intended to embody this value system, both as a means of defending values and as a means of making values manifest in people's behavior. Therefore, the legal precepts of the Pancasila should be followed in any legal formation or statutory creation. The UUPT's Article 7 Paragraph 1 will now read as follows: "The notary deed was written in Indonesian and signed by two or more people to form the company. But the author would point out in his justification that: "This capital union place more focus on the owner of the capital than on the total amount of capital gathered".

A Limited Liability Company formed by a married couple is recognized as a legal entity under Article 1 Point 1 of the UUPT because it was created by at least two people. This is only applicable to the husband and wife's innate assets (assets acquired prior to the marriage, including gifts, inheritances, and grants), whereas joint assets (assets acquired post-marriage but not including gifts, inheritances, or grants) from the husband and wife can only be used to establish a PT if there is a marriage agreement. This is because the status of the asset division would have an impact on the responsibilities that the husband and wife have for the PT that they co-founded without a marriage contract. According to Article 33 paragraph 4 of the 1945 Constitution of the Republic of Indonesia, which describes the economy as being structured as a joint venture based on the principle of kinship "and the principle of economic democracy, which of course can provide prosperity for everyone," the establishment of a limited liability company by two (two) people with limited assets will have an impact on achieving prosperity, prosperity, and social justice. According to economic theory, investment policies should always form the cornerstone of a populist economy that promotes the expansion of micro, small, medium, and cooperative company ventures.

Businesses can fundamentally encourage the occurrence of national economic activities that help to build a successful society, as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia and the fifth principle of social justice for all Indonesians.



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