



UNDERSTANDING SOLE PROPRIETORSHIP UNDER THE JOB CREATION LAW: A LEGAL HERMENEUTICS PERSPECTIVE

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Abstract

The issue of tender offers has gained prominence due to several high-profile cases involving the takeover of public companies, which have led to significant losses for shareholders, particularly public shareholders. The regulatory framework governing takeovers and tender offers is primarily established by Law No. 8 of 1995 concerning the Capital Market and Government Regulation No. 27 of 1998. The enactment of Law No. 21 of 2011 concerning the Financial Services Authority (OJK) in 2011 marked a significant shift in regulatory oversight, transferring authority over macroeconomic matters, including takeovers and tender offers, from Bank Indonesia to OJK. A notable example is the 2020 takeover of PT Garudafood Putra Putri Jaya Tbk. of PT Mulia Boga Raya Tbk. This study seeks to analyze the regulatory arrangements for tender offers in Indonesia and evaluate the impact of such takeovers on the public companies involved. The research employs normative legal research methodologies with a statutory approach, utilizing both primary and secondary legal materials.

Keywords: *Tender offer, transport, local government, local regulations.*

A. Introduction

The concept of an individual company has emerged as a significant phenomenon in the realm of entrepreneurship in Indonesia, particularly following the enactment of Law No. 11 of 2020 concerning Job Creation (Job Creation Law). This development is explicitly addressed in Article 153A, Paragraph (1) of the Law, which states: "Companies that meet the criteria for Micro Enterprises and Small Enterprises can be established by one (1) person." The Job Creation Law is designed to respond to global economic acceleration, with a particular impact on micro and small business sectors. Therefore, providing a legal entity status to micro and small enterprises (*UMK*) has been identified as a suitable solution.

In this context, companies that fulfill the *UMK* criteria are referred to as Individual PTs, as they can be established by a single person. This form of business organization is similar to the Sole Trader structure recognized in the United Kingdom (UK). Individual companies have introduced significant changes to the micro and small business sectors.¹ Unlike a Limited Liability Company, an Individual Company for micro and small enterprises does not require a Deed of Establishment. Instead, a statement of the company's establishment, electronically

¹ Syahrida and Juanidi Wise, "Single-Member Private Liabilities Company In The Jobs Creation Law On Micra and Small Enterprises," *International Journal Of Southeast Asian Studies* 1, no. 2 (2021): 87–95.

confirmed by the Minister of Law and Human Rights, is sufficient.² This contrasts with Limited Liability Companies, which must be established by at least two individuals and require a notarial deed.³

The intention behind this regulatory framework is to facilitate the formation and regulation of PTs for micro and small enterprises, allowing them to be established by a single person. This approach contrasts with other business forms such as individual companies and limited companies. Individual companies, also known as sole proprietorships or sole traders⁴, represent one of the simplest forms of business organization. These companies are characterized by being established, capitalized, and managed by a single individual.⁵

The Individual Company concept presents several advantages as outlined in Government Regulation No. 8 of 2021 concerning Authorized Capital and the Registration of Establishment, Changes, and Dissolution of Companies that Meet the Criteria for Micro and Small Businesses. While the Individual Company offers several benefits, it may not fully address the limitations inherent in other legal forms that provide legal protection for business operators. One of its advantages is the separation of personal and company assets, which facilitates easier access to banking finance for business actors.

An Individual Company operates on a one-tier structure, meaning that the sole owner manages and supervises the company. This arrangement encourages business operators to exercise greater prudence. Additionally, Individual Company owners benefit from lower tax rates compared to those applicable to Limited Liability Companies or individual income tax.⁶

The introduction of the Individual Company is particularly beneficial for small and micro-sized businesses. However, the true significance of this business form also raises its own set of challenges. To gain a clearer and more comprehensive understanding of the policy intentions behind the establishment of the Individual PT, a hermeneutical approach is employed. Hermeneutics, as the art of interpretation, involves delving into the object of study to uncover its true meaning and implications.⁷

The hesitation among many micro and small enterprises (MSEs) towards the Individual Company concept often stems from a lack of familiarity with this business structure. For instance, if a shop is eligible to become a company, the community must first gain a clear understanding of what an Individual Company entails before committing to this form of business organization. To address this, hermeneutics can serve as an effective method for interpreting and conveying the essence of the Individual Company concept.⁸

Hermeneutics elucidates the fundamental nature of legal texts, such as the Job Creation Law that governs Individual Companies.⁹ By focusing on the interpretative dimensions of these legal texts, hermeneutics offers valuable insights into the context and underlying intentions behind the legislation.¹⁰ This approach helps in understanding the relevance and application of Individual Companies in contemporary society. The term "hermeneutics" is derived from the Greek word "hermeneuein," meaning "to interpret" or "to translate." It encompasses the science and art of interpreting texts and philosophical thoughts. Initially,

² Mohammed Faiz Aziz and Nunuk Febriananingsih, "Realize Company Limited (PT) Individual For Business Micro Small (UMK) Through Bill About Create Work," *Journal Rechtsvinding* 9, no. 1 (2020): 91–108.

³ Adrian Aditya, "Not quite enough Answer Notary Public To Payment Capital Deposited On Moment Establishment Company Limited," *Jatiswara* 37, no. 1 (2022): 44–53.

⁴ Zainal Asikin and Hero Man Suhartana, *Introduction Law Company*, Edition Pert. (Jakarta: Prenada Media Groups, 2016).

⁵ Henry Raharjo, *Law Company*, Print Pe. (Yogyakarta: Publisher References Yustisia, 2009).

⁶ *Ibid.*

⁷ Romualdo E. Abulad, "What Is Hermeneutics?" *Criticism* 1, no. 2 (2007): 11–23.

⁸ Jazim Hamidi, *Hermeneutics Law: History-Philosophy And Method Tafsir*, Print Second. (Poor: UB Press, 2017). Matter 72.

⁹ Charles Guignon, "Becoming a Person: Hermeneutics Phenomenology's Contribution," *New Ideas In Psychology* 30, no. 1 (2012): 97–106.

¹⁰ Mudjia Rahardjo, *Hermeneutics: Dig Meaning Philosophical Text* (Poor: Intrans Publishing, 2020). Matter.

hermeneutics was a subdiscipline of theology focused on the interpretation of sacred texts.¹¹ Over time, its scope expanded to include the interpretation of legal and other cultural texts.¹²

Hans-Georg Gadamer's work, particularly his book "Truth and Method," illustrates that hermeneutics has evolved from its theological origins to a broader methodology applicable to various fields, including legal science.¹³ In the 12th century Italy, the need to apply past juridical texts to contemporary societies led to the development of interpretive methods¹⁴ that expanded hermeneutics beyond text interpretation to encompass human behavior and cultural products. In the context of legal hermeneutics, the Job Creation Law is examined as a dynamic text that interacts with its historical and cultural context. Legal texts are not static; their meanings can shift based on the circumstances and intentions of the legislators. By contextualizing the legal text, hermeneutics reveals that the law's interpretation is not fixed but evolves to maintain its relevance in modern society.¹⁵

Hermeneutics extends beyond merely analyzing text; it seeks to explore the meaning embedded within it by considering three critical aspects: the text itself, the authors or legislators who created it, and the recipients or parties affected by it. By addressing these three dimensions, hermeneutics aims to understand how the text, created by its authors, conveys the intended messages and addresses the context in which it operates.¹⁶

The interpretation of legal texts, such as those governing Individual Companies, involves examining these three aspects holistically. The text refers to the actual content and language of the legal document. Context encompasses the historical, social, and legal circumstances surrounding the creation of the text.¹⁷ Contextualization involves understanding the evolving relevance and application of the text in contemporary settings. Hermeneutics emphasizes that these elements are interconnected and must be considered together to fully grasp the meaning and implications of the law. Understanding how the text is shaped by its context and how it is applied to the current situation provides a comprehensive interpretation.

In the research for this journal, a normative legal research approach is employed, utilizing both primary and secondary legal materials. This method involves analyzing statutory texts and related legal resources to provide a thorough understanding of the subject matter and its implications for Individual Companies.

B. Discussion

1. Legal Text and Context of Limited Liability Companies

Article 153A, paragraph (1) of the Job Creation Law stipulates that companies meeting the criteria for Micro Enterprises and Small Enterprises can be established by a single individual. This provision serves as the foundational basis for the legal recognition of individual companies. Furthermore, it is essential to consider subsequent legal frameworks that implement and expand upon this initial provision.¹⁸

Understanding a legal text is most effective when accompanied by an explanation from its drafter. In essence, such elucidation is necessary to fully grasp the intended meaning of the text, as written documents often contain ambiguities due to inherent limitations in their expression.¹⁹

¹¹ Fakhruddin Faiz, *Hermeneutics Qur'an* (Yogyakarta: Qalam, 2002). Matter. 20-21.

¹² M. Quraish Shihab, *Rules of Interpretation: Terms, Conditions and Rules That You Should Know in Understanding the Verses of Al-Koran* (Tangerang: Lanterati, 2013). Matter. 401.

¹³ Hamidi, *Hermeneutics Law: History-Philosophy And Method Interpretation*. Matter. 85.

¹⁴ Brad Sherman, "Hermeneutics in Law," *The Modern Law Reviews* 51, no. 3 (1988): 386-402.

¹⁵ Zam Zam Nurhuda, "Hermeneutics Language: Text And Context Islam," *Journal Sasindo Unpam* 3, no. 3 (2015): 70-108.

¹⁶ Hariyanto S. Bennyal, "Analysis Position And Authority Board Representative Area In System Bicameral In Indonesia Reviewed From Hermeneutics Law" (University Muhammadiyah Poor, 2022). Matter. 9.

¹⁷ Jazim Hamidi, *Loc.cit*, matter. 80.

¹⁸ *Ibid.*

¹⁹ Rahardjo, *Hermeneutics: Dig Meaning Philosophical Text*. Matter 15.

Article 153A of the Job Creation Law is a crucial component of the legal text under consideration, reflecting broader legislative goals. The Job Creation Law aims to facilitate and streamline entrepreneurial activities, with particular emphasis on Micro and Small Enterprises (MSEs). These enterprises are pivotal to the national economy, accounting for 64.2 million businesses or 99.99% of all business entities, contributing 61.07% to the Gross Domestic Product (GDP), and employing 97% of the Indonesian workforce.²⁰ Notably, 98% of micro businesses operate informally, often with low productivity. Indonesia's entrepreneurship ratio stands at 3.4%, whereas Malaysia's is 5.01%. Enhancing market flexibility, re-skilling, up-skilling, and implementing worker welfare programs are vital for improving productivity and increasing income within the MSE sector.²¹

To fully appreciate the significance of the Job Creation Law in establishing individual companies, it is important to include insights from the academic texts associated with the law's drafting. According to the Indonesian Vision 2045, Indonesia aims to rank among the world's top five economic powers²² and achieve high-income status by 2040. The National Medium-Term Development Plan (*RPJMN*) for 2020-2024, outlined by the National Development Planning Agency (*Bappenas*), targets an average economic growth rate of 6% over five years and a GDP per capita growth of approximately 4% ± 1%. The long-term economic transformation plan seeks to transition Indonesia out of the Middle-Income Trap by 2036. With an expected average economic growth rate of 5.7% and real GDP per capita growth of 5% by 2045, Indonesia aims to become a developed country with a sustainable economy, a near-zero poverty rate, and a high-quality workforce.²³

At present, Indonesia faces significant challenges, both external and internal. External challenges include the current global economic instability and uncertainty, exacerbated by geopolitical dynamics and the advent of new technologies associated with the Fourth Industrial Revolution. These factors have altered the global economic landscape, contributing to a constrained global economic environment. The global economic slowdown has significantly impacted the Indonesian economy. In response, the government has continued efforts to maintain public purchasing power, boost government consumption, and enhance investment performance.²⁴

Currently, economic growth in Indonesia has slowed, reaching approximately 5%—a figure deemed insufficient to mitigate the risk of falling into the Middle-Income Trap (MIT). As of 2019, Indonesia remains classified as an upper-middle-income country, with a Gross National Income (GNI) per capita of USD 6,010.²⁵ Data from the Statistics Indonesia (BPS)²⁶ for 2018 indicate that nominal GDP per capita was IDR 56 million annually, with a nominal GDP of IDR 14,837.4 trillion and a poverty rate of 9.66%. In real terms, GDP per capita in 2018 was recorded at IDR 39.4 million per year, with a real economic growth rate of 5.4% over the past decade. At the current growth trend, it would take approximately 13 years to double GDP per capita from IDR 39.4 million to IDR 78.8 million per year.

If this growth trend persists, Indonesia's target to achieve a per capita income of IDR 320 million annually by 2045 may not be met, given that only 25 years remain to achieve this goal. To reach this target, Indonesia would need to significantly accelerate its growth rate beyond the current average of 5.4% per year.

²⁰ Diah Chaerani et al., "Mapping Business Micro Small Intermediate (UMKM) On Period Pandemic Covid-19 Use Analysis Media Social In Effort Enhancement Income," *Dharmakarya* 9, no. 4 (2020): 275–282.

²¹ Mohammed Faiz Aziz and Nunuk Febriananingsih, *Op. Cit.*

²² Government of Indonesia, *Academic Paper of Draft Job Creation Law* (Jakarta).

²³ *Ibid.* matter. 3

²⁴ *Ibid.* matter. 6

²⁵ *Ibid.* matter. 28

²⁶ Government of Indonesia, *Academic Paper of Draft Job Creation Law* (Jakarta: Government of Indonesia, 2020). Matter. 1-2.

These contextual factors are crucial for understanding the impetus behind the Job Creation Law. The economic conditions of recent years have been less than optimal, with limited significant progress.²⁷ Moreover, there is an anticipated demographic dividend that, while predicted to be moderate, is expected to peak in the coming years. Therefore, urgent and effective measures are necessary to address these economic challenges and to realize the ambitious goals set for 2045.²⁸

In efforts to empower micro and small enterprises (MSEs), the government has introduced the concept of the "Individual Company" as a solution. This form of business entity, while not immediately adopted by the Indonesian government, draws upon precedents established in countries such as the United States and the United Kingdom. Both of these economies have experienced significant benefits from implementing the "Individual Company" policy²⁹, particularly in terms of enhancing public money circulation during challenging economic periods.

Following the enactment of the Job Creation Law, Indonesia aims to achieve similar outcomes as those observed in the United States and the United Kingdom. The inclusion of "Individual Companies" in this legislation reflects an effort to address the complexities of economic recovery and the empowerment of MSEs. The legal text concerning Individual Companies in the Job Creation Law, specifically Chapter 153A, Paragraph (1), is designed to be interpreted literally.³⁰ However, a comprehensive legal analysis requires an understanding of the contextual meaning behind the text to ensure correct and objective interpretation.³¹

By examining the intersection of text and context in the legal formulation of Individual Companies, it becomes apparent that the presence of such entities is intended to bolster the national economy. This approach aims to support and sustain micro and small businesses, contributing to economic resilience. The draft of the Individual Company legislation is thus seen as a necessary measure, given the precedents established in other countries and the significant impacts observed.

It is understood that the formulation of the Individual Company draft is oriented toward national economic development. The realization that this development hinges on the modernization of the MSE sector underscores the government's focus. In this context, it appears that the policy formulators prioritized economic objectives over formal technicalities in the establishment of the Job Creation Law. Consequently, the legal framework, while comprehensive, reflects an emphasis on facilitating national economic growth rather than adhering strictly to legislative procedural norms.

2. Contextualization of Individual Persons

Contextualization involves reproducing meaning and ensuring its relevance to contemporary conditions.³² The enactment of legal products may differ significantly from the period in which they are applied, given that laws often evolve to address current circumstances and challenges.³³ Hermeneutics, or the interpretation of texts within their context, is thus a crucial stage in aligning legal provisions with present-day realities. Legal formulators are

²⁷ Vito Evola, "Cognitive Semiotics and On line Reading of Religious Text: A Hermeneutics Model of Sacred Literature and Everyday Revelation," *Consciousness, Literature, and the Arts* 6, no. 2 (2015): 1–17.

²⁸ Kodrat Alam et al., "Analysis of the Implementation of Law Number 11 of 2020 concerning Job Creation," *Indonesian Social JournalScience* 3, no. 7 (2022): 1119–1128.

²⁹ James Robertson, "A Proportionate Approach to Accreditation For Sole Traders and Small-to-Medium Providers of Forensics Service-a UK Versus Australian Perspective," *Australian Journal of Forensic Sciences* no. 5 (2016): 483–495.

³⁰ Susan Tiefenbrun, "A Hermeneutics Methodology And How Pirates Read and Misread The Bern Convention," *Wisconsin International Law Journal* 17, no. 1 (1999): 1–26.

³¹ Aflahan, *Study Language* (Pamekasan: Ambassador Media Publishing, 2018). Matter. 52.

³² Habibul Umm Taiuddin, "Hermeneutics Law As Theory Invention Law New," *JIME* 2, no. 2 (2016): 326–334.

³³ Jazim Hamidi, *Op.cit*, Matter. 32.

tasked with designing laws intended to remain applicable over extended periods.³⁴ Therefore, legal frameworks must not only address current issues but also anticipate and provide solutions for potential future challenges.³⁵

The concept of individual companies, as introduced by the Job Creation Law, is not unprecedented globally. For instance, in the United Kingdom, a similar entity is known as a Sole Trader, while in the United States, Canada, and Singapore, it is referred to as a *Sole Proprietorship*. The *Sole Proprietorship* model has a long history and has demonstrated significant positive impacts, particularly in terms of technological sustainability and business growth. Many *Sole Proprietorships*^{36,8} have evolved into large companies, indicating that the Individual Company model in Indonesia has substantial potential. It is therefore appropriate to integrate such concepts into legal frameworks aimed at fostering a sustainable economy, drawing from international precedents that utilize terms like Sole Proprietorship. Entrepreneurship remains relevant across various societal contexts. As Cheaka posits in his research, Individual Companies represent an implementation of human nature's desire to establish a company with limited liability, even if founded by a single individual.³⁷

However, the Job Creation Law, which provides the legal framework for Individual Companies, has faced significant scrutiny and is perceived as deficient in various respects. This issue was highlighted in judicial reviews by the Constitutional Court, which ruled that the Job Creation Law was conditionally unconstitutional due to irregularities in its legislative formation process, as outlined in the norms governing the formation of legislative regulations.³⁸ This constitutional issue is crucial because the acceptance and relevance of a legal product depend significantly on its legitimacy and the public's willingness to accept it. Contextualization of the Job Creation Law becomes problematic if the law is constitutionally flawed. Despite the normative appropriateness of the provisions, such a law remains ineffective if it contradicts constitutional principles.³⁹

From a legal hermeneutical perspective, contextualization involves not only reproducing the meaning of the legal text and its societal relevance but also ensuring its alignment with existing legal frameworks, particularly the constitution as the highest positive law. It is essential to consider how hierarchical regulations operate within the framework of legal interpretation to accurately reproduce the meaning of a legal text. Additionally, achieving an objective interpretation free from personal biases is critical, as such studies must adhere to the prevailing legal standards. The effectiveness of the Job Creation Law in fulfilling its intended purpose depends on its formal legitimacy. As Hans Kelsen asserts, every legal norm is rooted in more fundamental norms, with higher-level norms deriving their validity from these foundational principles.⁴⁰

The relevance of the Job Creation Law in Indonesia can be examined through Chapter 7 of Act No. 12 of 2011 concerning the Formation of Legislation (*UUP3*). According to this hierarchical framework, the Job Creation Law is categorized as a third-order regulation. This positioning implies that the Job Creation Law must not conflict with more fundamental statutory regulations, such as the *MPR* Decrees and the 1945 Constitution of the Republic of

³⁴ B. S. Hardjowahono, E Erawaty, and I Susani, *A number of Thinking About Development System Law National Indonesia*.

³⁵ Taiuddin, "Hermeneutics Law As Theory Invention Law New." Matter. 330.

³⁶ Geof Simmons et al., "An Exploration of the Attitudes and Strategic Responses of Sole-Proprietor Micro-Enterprises in Adopting Information Communication Technology," *International Small Business Journal* 32, no. 3 (2014): 285–306.

³⁷ Jetu Edosa Cheaka, *Introducing Single Member Companies in Ethiopia: Major Theoretical and Legal Considerations* (Hamburg: Anchor Academic Publishing, 2016). Matter. 11.

³⁸ Look Amar Decision Court Constitution Decision Number 91/PUU-XVIII/2020.

³⁹ Darren Langdridge, "A Hermeneutic Phenomenological Investigation of the Construction of Sadomasochistic Identities," *Sage Journal* 7, no. 1 (2016): 307–323.

⁴⁰ Monica Zalewska, "The Metaphorical Aspect of Hans Kelsen's Pure Theory of Law," *Principia* 22, no. 65 (2018): 185–206.

Indonesia. The 1945 Constitution⁴¹ holds supremacy over other legislative regulations, reflecting national ideals and the Pancasila ideology. Indonesia, as stipulated in Article 1, Paragraph (3) of the 1945 Constitution, is characterized as a rule-of-law state, where all actions must align with and uphold the law.

However, the Constitutional Court has determined that the Job Creation Law does not fully align with existing legal standards. The Court's ruling highlighted two primary concerns: first, the formation process of the law was not sufficiently inclusive of public participation; and second, the omnibus law format, while innovative, is not appropriately accommodated within the Indonesian civil law system as regulated by the *UUP3*.

Normatively, the Job Creation Law can be interpreted as a progressive legal product aimed at promoting societal welfare. The detailed provisions concerning Individual Companies are perceived as potentially having a significant positive impact in the future. Nonetheless, the law's failure to gain societal acceptance due to its unconstitutional nature underscores that legal texts, as objects of interpretation, are not inherently dynamic. Instead, their relevance is contingent upon their alignment with societal conditions and legal norms. It is plausible that future interpretations of the law will vary in response to evolving situations and conditions.

C. Conclusion

The emergence of the Individual Company as a new phenomenon in Indonesian entrepreneurship can be traced to the enactment of Law No. 11 of 2020 concerning Job Creation (Job Creation Law). Specifically, Article 153A, Paragraph (1) of this law stipulates that companies meeting the criteria for micro and small businesses may be established by a single individual. This provision contrasts with the requirements for a Limited Liability Company, which necessitates the involvement of at least two persons and the creation of a deed by a notary. Unlike Limited Liability Companies, Individual Companies for micro, small, and medium enterprises (MSMEs) are not required to have a Deed of Establishment. Instead, they only need an electronic ratification of the company establishment statement by the Minister of Law and Human Rights, with potential waivers for attestation fees.

The implementation of the Job Creation Law, which serves as the legal foundation for Individual Companies, has sparked various debates. Hermeneutics, a branch of legal philosophy, can provide valuable insights into interpreting the essence of Individual Companies. Hermeneutics emphasizes that legal texts should not be viewed in isolation but understood within their broader context. This perspective acknowledges that laws are influenced by the socio-economic conditions that prompted their formulation. Furthermore, contextualization highlights that legal texts are not static but must adapt to contemporary conditions. The conceptualization of Individual Companies is aligned with national economic development goals, reflecting an understanding that advancing the micro and small business sectors is crucial for economic progress. The government's focus on practical implementation over formal technicalities in the Job Creation Law illustrates an effort to facilitate economic growth through legal reforms.

Despite the progressive nature of the Job Creation Law, which aims to promote welfare as its ultimate objective, the public's acceptance of this legal product has been limited. The perceived unconstitutionality of the law suggests that while legal texts may strive to address contemporary issues, their interpretations and acceptance can evolve with changing societal contexts. Future interpretations of the law may differ as conditions and situations develop, reflecting the dynamic nature of legal texts and their interaction with societal realities.

⁴¹ Chapter 7 Constitution Number 12 Year 2011 about Formation Regulation Legislation.

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