




The Reconstruction of the Implementation from Business Judgment Rule Doctrine in Individual Limited Liability Companies: A Progressive Legal Review

Lisma Lumentut^{1*}, Liberthin Palullungan²

^{1,2} Faculty of Law Indonesia Paulus Christian University, Makassar, Indonesia.

 : lumentutlisma@gmail.com
Corresponding Author*



Submitted: 2023-06-24

Revised: 2023-09-13

Published: 2023-10-30

Article Info

Keywords:

Business Judgment Rule;
Progressive Law; Individual
Company.

Abstract

Introduction: Individual Company is part of a legal reform which is based on efforts to empower small and medium enterprises. Individual Company are intended to empower the community's economy so that the leaders of individual Company need to receive protection through the business judgment rule doctrine.

Purposes of the Research: This study aims to formulate a legal prescription related to the implementation of the doctrine in the conception of the business judgment rule in individual companies in terms of a progressive legal perspective.

Methods of the Research: Normative law with a concept and statutory approach.

Results of the Research: The relevance of the implementation of the business judgment rule doctrine for individual company can also increase the competitiveness of individual company because it can increase innovation from the leaders of individual company to be more optimal and maximal in managing individual company and not be afraid of the various risks that exist. Viewed from a progressive legal perspective, the reconstruction of the implementation of the business judgment rule doctrine for individual company can be carried out through analogical legal constructions because individual company and are generally the same in substance. In order to optimize the implementation of the business judgment rule doctrine for individual company, it is necessary to establish special rules governing guidelines and instructions in implementing the business judgment rule doctrine for individual company.

1. INTRODUCTION

The promulgation of Law No. 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law No. 2 of 2022 concerning Job Creation (hereinafter referred to as Job Creation Law) has implications for various legal policies that have an orientation to improve and empower the Indonesian economy. This can be proven by the existence of a Government Regulation (hereinafter referred to as *Peraturan Pemerintah* or PP) that aims to empower Micro, Small and Medium Enterprises (hereinafter referred to as MSMEs or *Usaha Mikro, Kecil, dan Menengah*).¹ One of the PPs whose orientation is to empower MSMEs is PP

¹ Elvlyn Elvlyn and Delpedro Marhaen, "Pengaruh Undang-Undang Cipta Kerja Terhadap Digitalisasi UMKM Di Tengah Pandemi," *Justisi* 8, no. 2 (2022): 82-94, <https://doi.org/10.33506/js.v8i2.1707>.

Lisma Lumentut, Liberthin Palullungan, "The Reconstruction of the Implementation from Business Judgment Rule Doctrine in Individual Limited Liability Companies: A Progressive Legal Review"

No. 8 of 2021 (hereinafter referred to as PP UMKM). PP UMKM actually regulates the requirements as well as the authorized capital of an MSME to be able to form an Individual Limited Liability Company or *PT Perseorangan* (hereinafter referred to as ILLC). ILLC is a "new idea" in the MSME PP which aims to empower MSMEs to have competitiveness in the use of economic competition by forming a legal entity Limited Liability Company (hereinafter referred to as PT).²

Construction in PP MSMEs is interesting because it has changed the construction of PT which is generally a capital partnership in the form of shares.³ However, the presence of PP MSMEs has actually formulated a progressive view by making substantive changes related to PP legal entities that need to be widely understood, namely PP as a capital partnership and PP Individuals. Although on the one hand the provisions regarding ILLC in PP UMKM are oriented to empower MSMEs, on the other hand there are legal problems in the form of legal responsibility of a PT leader in ILLC. In PT as a capital partnership, referring to the provisions of Article 97 paragraph (5) of Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as PT Law), there is actually a doctrine regarding business judgment rule that regulates the limits of liability carried out by PT leaders. However, in Individual Limited Liability Company, these provisions are not regulated in detail. This raises the legal problem whether the doctrine of the business judgment rule only applies to PT as a capital partnership and does not apply to an ILLC

Regulation of business judgment rules in an Individual Limited Liability Company should also be important considering that an ILLC can also be established by two or more people. An Individual Limited Liability Company established by two or more people is important to regulate the doctrine of business judgment rule. Considering that in an ILLC established by two people, the responsibility of the head of the ILLC must be clear and distinguishable from the responsibility by a legal entity or the ILLC itself. This study aims to formulate a legal prescription related to the implementation of doctrine in the conception of business judgment rule in ILLC from a progressive legal perspective. The progressive legal perspective is aimed at analyzing how the legal dimension and society see the construction of the implementation of business judgment rules in ILLC.

Research on the business judgment rule in *PT Perseorangan* is actually a new research that has never been done by researchers before. This is because in addition to the regulation of PP, MSMEs are new arrangements (ratified in 2021), also the implementation of PP MSMEs is still at the socialization level. Even so, there are three previous studies that discuss the business judgment rule, namely: a) research conducted by Sadino, et al. (2022) which focuses on aspects of the use of the business judgment rule doctrine for SOE directors, namely PT PLN.⁴ The novelty of this research is that the element of good faith is an important element that confirms that the directors of SOEs, namely the directors of PT PLN, are free from charges of criminal acts of corruption. The next research on business judgment rule was carried out by b) Wardani (2023) whose discussion analysis revolves around legal

² Rahmadi Indra Tektona and Dwi Ruli Handoko, "Implikasi Hukum Pailitnya Perseroan Perorangan Terhadap Direksi Di Indonesia," *Jurnal Ilmiah Dunia Hukum* 6, no. 2 (2022): 115, <https://doi.org/10.35973/jidh.v6i2.3106>.

³ Yanuar Agung Sudjateruna and Gde Made Swardhana, "Pengaturan Organ Komisaris Dalam Perseroan Terbatas Perseorangan Menurut Perspektif Undang-Undang Cipta Kerja," *Acta Comitatus* 6, no. 03 (2021): 474, <https://doi.org/10.24843/ac.2021.v06.i03.p2>.

⁴ Sadino Eko Priyono, Agus Surono, "Doktrin Business Judgment Rule Dalam Memberikan Perlindungan Hukum Kepada Direksi BUMN (Studi Kasus PT. PLN)," *Jurnal Hukum Dan Kesejahteraan* 7, no. 2 (2022): 30.

comparisons regarding the doctrine of business judgment rule carried out in Indonesia, Japan, and the United States.⁵ The originality of this study reveals that, while the idea of business judgment rule is generally used. There are differences between those carried out in Indonesia, Japan, and the United States, in principle all three have something in common, namely: the existence of good faith, careful consideration, and rational decisions that can prevent company leaders from being responsible for company decisions that have been taken.

Research on the concept of business judgment rule was also conducted by c) Darmawangsa (2023) which analyzes various misunderstandings regarding the doctrine of business judgment rule from aspects of the structure and substance of law in Indonesia.⁶ The novelty of this study is that the doctrine of business judgment rule in the PT Law in Indonesia does not have a strong philosophical footing and seems to cause legal vagueness. This is different from the formulation of the doctrine of business judgment rule in Malaysia which is limited better and creates legal certainty. From the three previous studies on business judgment rule, it can be seen that the analysis of business judgment rule in ILLC has never been researched so that it has a novelty of original research.

2. METHOD

This research with the main focus of analysis of business judgment rule in *PT Perseorangan* is a legal research with a normative type. Normative legal research has characteristics on the dominance of the use of legal concepts, theories, and doctrine to analyze a legal product, including positive law.⁷ The primary legal materials used here are: the 1945 NRI Constitution, the PT Law, the Job Creation Law, and the MSME PP. Secondary legal materials are journal articles (especially the latest / last 10 years, books that discuss MSMEs and business judgment rules, as well as proceedings and other research results. Non-legal material is a dictionary of languages. To optimize this research, conceptual and statutory approaches are used to further reinforce the prescription in this study.

3. RESULTS AND DISCUSSION

3.1 The Relevance of Business Judgment Rule Doctrine in Individual Limited Liability Company

The development of the business world gave rise to a rapid legal response to accommodate various aspects that are important to get regulated by law.⁸ In Indonesia, developments in the field of business law have received attention with the formulation of the Job Creation Law. Even though the Job Creation Law raises pros and cons in the community, it remains one of the laws that has a business orientation that is expected to

⁵ Desty Sari Wardani, "Perlindungan Direksi Terhadap Keputusan Bisnis Melalui Penerapan Prinsip Business Judgement Rules Di Amerika Serikat, Jepang, Dan Indonesia," *Dharmasiswa* 2, no. 3 (2023): 1141, <https://doi.org/10.1080/14735970.2017.1412688>.

⁶ Williem Darmawangsa, "Interpretasi Yang Salah Mengenai Business Judgment Rule Pada Substansi Dan Struktur Hukum Di Indonesia," *Unes Law Review* 5, no. 3 (2023): 1356-68.

⁷ Tunggul Ansari Setia Negara, "Normative Legal Research In Indonesia: Its Origins And Approaches," *ACLJ* 4, no. 1 (2023): 5.

⁸ I. Gede Agus Kurniawan, "The Existence of Copyrights on Traditional Cultural Expressions Held by the State: Implications and Orientations," in *Intellectual Property - Global Perspective Advances and Challenges [Working Title]* (IntechOpen, 2023), <https://doi.org/10.5772/intechopen.1001312>.

have an impact on expanding employment.⁹ One important aspect in regulating the Job Creation Law is through the empowerment of MSMEs. The empowerment of MSMEs is important in developing a conducive business climate in Indonesia. There are three arguments that emphasize the importance of empowering MSMEs in building a conducive business climate in Indonesia. *First*, MSMEs can specifically be referred to as a business that emphasizes a labor-intensive orientation. The consequences of MSMEs as labor-intensive business midwives mean that it does not mean that MSMEs ignore the capital aspect, but the focus of MSMEs which emphasizes the number of small and medium scale businesses so that they can empower the community.

MSMEs as labor-intensive businesses also have bottom-up characteristics.¹⁰ In this characteristic, the progress of a business is determined by the role and active participation of MSMEs that can drive the economy from small to medium scale that can contribute to the national economy. *Second*, MSMEs are business fields that have resistance and high survival rates related to various crises that hit. If large-scale businesses generally depend on the presence or absence of crisis conditions and it can even be concluded that a large capital-intensive business field can "go out of business" instantly with a crisis both national, regional, and international. This is different from MSMEs, where even in crisis conditions, MSMEs can still rise and have various efforts to encourage the economy to get out of the crisis. This is as stated by Airlangga Hartarto that from the fact of the experience of the 1998 monetary crisis to the COVID-19 crisis that hit Indonesia and the world in 2020-2021, MSMEs still survive and become the backbone of the national economy during the pandemic.¹¹

Third, MSMEs can be an alternative for the community to not just passively look for job vacancies. MSMEs can invite the community to be independent and creative in how to create jobs. From the three arguments above, it can be concluded that the empowerment of MSMEs is an important aspect of the national economy, so it is natural that the Job Creation Law gives an important emphasis in efforts to empower MSMEs. One of the efforts to empower MSMEs in the Job Creation Law is carried out by involving legal policies that can support and support the empowerment of MSMEs. Through the implementing regulations of the Job Creation Law, namely through the MSME PP, the need for regulations regarding the latest legal construction regarding PT has been constructed, namely the construction of Individual Limited Liability Company that can empower MSMEs.¹²

The idea of *PT Perseorangan* in PP UMKM is a progressive idea, especially associated with the conception of PT in general which refers to the PT Law, that the main identification of PT is capital partnership. After the presence of PP UMKM, the provisions regarding PT were then changed which confirmed that PT has two characteristics, namely PT as a capital partnership and Individual Limited Liability Company. PT as a capital partnership is still subject to the provisions of the PT Law, while related to PT Perseorangan is subject to the provisions of the MSME PP which refers to the Job Creation Law. Unique provisions regarding Individual PT as emphasized in Article 2 paragraph (1) which states that

⁹ Yassar Aulia, Ali Abdurahman, and Mei Susanto, "Fundamental Principles of the Legislation Process," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 6, no. 1 (2021): 41–64, <https://doi.org/10.22373/petita.v6i1.109>.

¹⁰ Ridwan Wijayanto Said Nabilah Apriani, "Upaya Perlindungan Hukum Terhadap Industri Usaha Mikro Kecil Dan Menengah (UMKM) Di Indonesia," *Al Azhar Indonesia* 2, no. 1 (2022): 29.

¹¹ Airlangga Hartarto, *Pembiayaan UMKM* (Jakarta: Raja Grafindo Persada, 2022).

¹² Luthfi Mohamad Zen and Yeti Sumiyati, "Problematisa Hukum Pengelolaan Usaha Mikro Dan Kecil Sebagai Perseroan Perorangan," *Litigasi* 23, no. 1 (2022): 83–100, <https://doi.org/10.23969/litigasi.v23i1.5287>.

Individual Limited Liability Company is divided into two types, namely: Individual PT established by one person and ILLC, established by two or more people. Regarding legal liability carried out by an Individual PT established by one person, it does not actually cause problems because one founder will be responsible for any errors or omissions of the ILLC.¹³ However, for an individual PT established by two or more people, the liability aspect is important because there must be relevance between the losses of the PT and the actions taken.

The provision of legal responsibility for the head of an individual PT established by two or more people in the MSME PP creates legal certainty because the business judgment rule doctrine does not get precise arrangements in the MSME PP. The doctrine of business judgment rule asserts that the head of the PT, both directors and commissioners must be responsible for policies and/or decisions that are detrimental to the PT as there are logical consequences regarding the relationship between the actions and/or policies of the PT and the losses experienced. Judging from the scope of the development of the doctrine of business judgment rule, this doctrine developed in almost all parts of the world both in countries with common law and civil law systems.¹⁴ This is because the implementation of the doctrine of business judgment rule is generally determined by positive legal developments and court decisions that develop in a country. The development of the doctrine of business judgment rule was then also applied in Indonesia, especially by referring to the provisions of Article 97 paragraph (5) of the PT Law. Regarding the formulation of the business judgment rule doctrine in the PT Law, there are actually two views on this matter, first, Article 97 paragraph (5) of the PT Law is considered to have required the implementation of the business judgment rule doctrine.

This refers to the limitation of the implementation of the doctrine of business judgment rule as emphasized in Article 97 paragraph (5) of the Law on PT. Referring to this first view, the implementation of the doctrine of business judgment rule must fully refer to the Law on PT. The second view that Article 97 paragraph (5) of the PT Law cannot be interpreted plenary has regulated the doctrine of business judgment rule. This second opinion also confirms that in addition to referring to Article 97 paragraph (5) of the PT Law, the implementation of the business judgment rule doctrine must also refer to legal developments through existing court decisions.¹⁵ Compared to the first opinion, the second opinion is actually looser in interpreting the doctrine of business judgment rule so that it can adjust to the current developments.

The implementation of the doctrine of business judgment rule as affirmed in the PT Law encounters problems when there is an orientation to the existence of an ILLC as affirmed in the MSME PP. ILLC nomenclature also uses the term PT, which is also the same as in PT in general which is regulated in the PT Law. The legal question that needs to be elaborated is, does the doctrine of business judgment rule as affirmed in the PT Law also apply to ILLC that is subject to the provisions of the MSME PP? The answer to this can be

¹³ Rizki Ramadani Anggreany Arief, "Omnibus Law Cipta Kerja Dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas," *Al Adalah* 6, no. 2 (2021): 110.

¹⁴ I Gede Agus Kurniawan, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara, "IUS Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 31–45, <https://doi.org/https://doi.org/10.29303/ius.v11i1.1170>.

¹⁵ Friedrich Hamadziripi and Patrick C. Osode, "A Critical Analysis of Zimbabwe's Codified Business Judgment Rule and Its Place in the Corporate Governance Landscape," *Law, Democracy and Development* 25, no. 2021 (2021): 1–29, <https://doi.org/10.17159/2077-4907/2021/ldd.v25.20>.

seen from the orientation regarding the doctrine of the business judgment rule itself. The doctrine of business judgment rule related to efforts to implement it actually has three orientations. *First*, the doctrine of business judgment rule seeks to protect PT leaders in deciding a risky policy.¹⁶ The doctrine of business judgment rule actually wants to emphasize that not all policies that are risky and detrimental to PT are the fault of the leadership. Instead, leaders must be protected and appreciated for being able to formulate risky PT policies as long as they are based on a rational view and based on good faith.

Second, the doctrine of business judgment rule actually also seeks to apply the principle of proportionality related to losses suffered by PT. The principle of proportionality in this case emphasizes that PT losses that are not caused by the fault of the leader cannot be the responsibility of the leadership.¹⁷ This is to emphasize that PT leaders must be responsible for decisions taken due to their mistakes or omissions. Leaders cannot be held accountable for matters related to research and business potentials that commonly occur. *Third*, the doctrine of business judgment rule is also aimed at maintaining the effectiveness and efficiency of a PT. This is because if every decision taken is the responsibility of the PT leadership, then this can lead to a business climate that is not conducive. PT is more preoccupied with the administrative aspects of decision making than with efforts to capture existing business ideas and opportunities to take advantage.¹⁸

Of the three orientations to the implementation of the business judgment rule doctrine, this actually has relevance related to its implementation in the aspect of ILLC, especially those formed by two or more people. Regarding an ILLC formed by one person, of course the doctrine of business judgment rule has no relevance but related to an ILLC formed by two or more people, this certainly has relevance. There are three relevance of the implementation of the business judgment rule doctrine for an ILLC formed by two or more people. *First*, as an ILLC formed by two or more people the proportionality of leadership responsibility is important so that not all mistakes are delegated as the fault of the ILLC. With the implementation of the business judgment rule doctrine for ILLC, the accountability of each leader will be appropriately used as well as correctly determine who has the right to be responsible for certain mistakes.

Second, the implementation of the business judgment rule doctrine for *PT Perseorangan* also has relevance to protect the leadership of *PT Perseorangan* to be able to make decisions carefully and precisely. ILLC leaders with the business judgment rule doctrine will certainly not worry about being held accountable considering that PT Individual leaders in deciding a PT policy are in accordance with the business judgment rule doctrine. *Third*, the implementation of the business judgment rule doctrine for ILLC can also encourage the development of ILLC because with the implementation of the business judgment rule doctrine, ILLC leaders can be more free to increase business and enlarge the scope of business while capturing other economic opportunities to increase profits.

¹⁶ Lucie Josková, "The Business Judgment Rule in the Czech Republic," *Acta Universitatis Carolinae Iuridica* 68, no. 3 (2022): 37–47, <https://doi.org/10.14712/23366478.2022.34>.

¹⁷ Shinta Zahara, "Construction Application by Business Judgment Rule Principle as Legal Protection against Directors' Decisions That Harm the Company," *Legal Brief* 11, no. 5 (2022): 2722–4643, <https://doi.org/10.35335/legal.xx.xx>.

¹⁸ Gatut Priyo Sembodo, Arman Nefi, and Efa Laela Fakhriah, "Urgensi Penerapan Prinsip Business Judgment Rule Dalam Peraturan Pemerintah Nomor 63 Tahun 2019 Tentang Investasi Pemerintah," *Jurnal Poros Hukum Padjadjaran* 3, no. 2 (2022): 185–208, <https://doi.org/10.23920/jphp.v3i2.789>.

3.2 Progressive Legal Perspective Regarding the Reconstruction of the Business Judgment Rule Doctrine in Individual Limited Liability Company

The importance of applying the business judgment rule doctrine to PT Perseorangan is actually in line with the progressive legal conception put forward by Satjipto Rahardjo. The progressive legal perspective is actually a legal conception that emphasizes that the law must be able to adapt to developments that occur in society. Progressive law can be called a "product" of reform because although this genuine thought has been rooted in the thought of Satjipto Rahardjo, this term has increasingly emerged in the era of the early 2000s which historically was at the beginning of the reform era.¹⁹ The era of reform was actually marked by massive development and legal reform. This is because social, economic, and political reforms will be optimal if complemented in the aspect of legal reform. The idea of progressive law can be said to be Satjipto Rahardjo's most important contribution as a "gift" to the Indonesian nation in the reform era.

The idea of progressive law as put forward by Satjipto Rahardjo is based on concerns about the existence of law practice and enforcement in Indonesia.²⁰ In the midst of turbulent reforms that mandate reforms in various aspects, law in Indonesia actually runs "static" especially when the Indonesian legal creed is based on formalism and positivism.²¹ This view actually presents a legal instrument that is dry with Indonesian morality. This dry law, instead of being a solution, is on the contrary a thorn that can tear down the building of the Indonesian legal state. Progressive law was generally initiated by Satjipto Rahardjo because of the gap between law and social reality.²² Law is separated from social reality as "water with oil". This separation occurs because law is considered a "self-contained norm" so it must be released from the social framework that accompanies it. The separation between law and social reality causes problems when there is a massive and paradigmatic change in social reality.²³ In addition to the reform era, paradigmatic changes also occurred in the era of disruption, namely the increasing number of unemployment and the difficulty of employment which was inversely proportional to the number of labor forces.²⁴ This phenomenon requires the efforts and role of the government to respond and formulate policies to improve the welfare of the community.

Progressive law actually tries to remind a legal instrument not to forget its social environment. The social environment as a place where law works must be understood in a complex way so that law and social environment become inter-integrated. If the law and the social environment are integrated, then the law will have a responsive character, namely facilitating existing developments so that the law becomes a solution for developments in

¹⁹ A'An Efendi and Fradhana Putra Disantara, "Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?," *Yuridika* 37, no. 2 (2022): 329-66, <https://doi.org/https://doi.org/10.20473/ydk.v37i2.33364>.

²⁰ Muchamad Taufiq and Fradhana Putra Disantara, "The Principle of People's Authoritative Manifestation in Mining Management: An Inclusive Legal Perspective," *SASI* 29, no. 3 (June 12, 2023): 442, <https://doi.org/10.47268/sasi.v29i3.1329>.

²¹ Fradhana Putra Disantara, Bayu Dwi Anggono, and A'An Efendi, "Mendudukkan Norma Etika: Perspektif Teori Keadilan Bermartabat Terhadap Relasi Etika Dan Hukum," *Rechtsidee* 10, no. 2 (2022): 1-13, <https://doi.org/10.21070/jihr.v10i0.773>.

²² Satjipto Rahardjo, *Biarkan Hukum Mengalir* (Jakarta: Kompas, 2007).

²³ Tamar Pitch, "Theory and Sociology of Law: A Dialogue with Luigi Ferrajoli," *Ragion Pratica* 2, no. 2 (2020): 410-15, <https://doi.org/10.1415/98599>.

²⁴ Nyoman Mas Aryani et al., "Quo Vadis Protection of The Basic Rights of Indonesian Workers: Highlighting The Omnibus Legislation and Job Creation Law," *Pandecta Research Law Journal* 17, no. 1 (2022): 103-20, <https://doi.org/10.1017/S0010417517000044.3>.

society. The opposite happens when the law is separated from the reality of society which makes the law "dry" and even becomes a dead instrument (the deadly instrument) that can only regulate society without understanding the development of society.²⁵ Laws that are not in accordance with the development of society will have an impact on three aspects. *ang*, the law loses its enforceability as law. Even if the law has been passed and formalized by a valid and authorized institution, but when the law is not in accordance with the development of society, the law will lose its validity. The true law does exist, but it is nothing more than an inapplicable "empty skeleton." *Second*, the law can actually have the potential to trigger conflict in society. By not following or even not facilitating the development of society, the law can turn into an "enemy" of society that can cause conflicts and add to existing problems in society.

Third, the incompatibility between law and society can lead to a situation of "chaos" in law. This situation occurs when irregularity actually becomes the main credo of the law which, in addition to harming society, also makes the law more unclear and uncertain whose implications can reduce the authority of the law in society.²⁶ Laws that originally contained rules that were the crystallization of values actually became something that could be hated by society. The three impacts of the conflict between law and social reality above show that law should indeed go side by side with the reality that exists in society. Progressive law in this case encourages the law to run side by side with the reality that exists in society. Law and social reality are indeed two different things, but they are actually an inseparable unity.²⁷ This shows that every societal development must get attention from the law. One of the legal efforts to facilitate community development is a paradigmatic shift in the conception of PT based on PP UMKM and then expanded with the existence of ILLC. The idea of the formulation of PP Individual is an idea that is in line with a progressive legal orientation based on at least three arguments. *First*, PT is a form of legal entity (*rechtspersoon*) that is formed not from a vacuum. PT was formed as a means for humans to utilize and optimize economic aspects. This orientation shows that the development of society is very possible for the development of conceptions, one of which is the development of conceptions about *PT Perseorangan*.

Second, the formulation of *PT Perseorangan* actually aims to empower MSMEs as one of the economic sectors which, apart from coming from the people and small communities, is also one of the pillars of the country's economy. This orientation is actually in line with the progressive legal view which emphasizes that the fulfillment of substantive rights needs to be given, especially for weak and powerless parties.²⁸ *Third*, as a "product" of community development, ILLC must be formulated and applied progressively with reference to the spirit of existing development. This means, *PT Perseorangan* is a small part of PT, so the conclusion is that various aspects that apply to PT, will generally apply also to ILLC.

²⁵ Satjipto Rahardjo, *Membedah Hukum Progresif*, 3rd ed. (Jakarta: Kompas, 2008).

²⁶ Hadis Turmudi et al., "The Implementation of Chaos Theory of Law on The Village Government System in Indonesia," in *Proceedings of the International Conference on Community Empowerment and Engagement (ICCEE 2021)*, vol. 661, 2022, 272-79, <https://doi.org/10.2991/assehr.k.220501.031>.

²⁷ I Gede Agus Kurniawan and Lourenco de Deus Mau Lulo, "Legal Protection Orientation And Formulation For Traditional Musical Instruments As Patents: An Inclusive Legal Paradigm," *Jurnal Dinamika Hukum* 23, no. 2 (2023): 325-39.

²⁸ Nabila Ghina Dzakhirah Wilda Shafira, Ananda Elena Nur Azizah, Primanadya Dian Pamella, "Business Judgment Rule Dalam Perspektif Hukum Progresif: Esensi Dan Implikasinya Di Indonesia," *Rechtsidee* 11, no. 1 (2022).

Referring to the three relevance of the idea of *PT Perseorangan* with a progressive legal perspective, then, in fact, the implementation of the doctrine of business judgment rule is relevant to be applied in *PT Perseorangan*. This is based on the dimension of expediency which is one of the important pillars in progressive law where the implementation of the business judgment rule doctrine has great benefits for ILLC. One of the benefits is that it will increase professionalism and economic orientation in *PT Perseorangan*. ILLC leaders with the doctrine of business judgment rule are not afraid to innovate while formulating decisions that have the potential to increase the economic value of an ILLC. *PT Perseorangan* which increases economic value will also have an impact on the income level of people who work at *PT Perseorangan*. This actually shows that the implementation of the doctrine of business judgment rule has a dimension of benefit to society. Reconstruction or renewal of the formulation of the doctrine of business judgment rule to be applied in *PT Perseorangan* can actually be done through legal construction. The legal construction that can be used is the legal construction of analogies that emphasize that the essence of an ILLC with a PT in general is substantively the same. Therefore, what is applied in the PT Law in general should also be applied by *PT Perseorangan*. In addition to legal construction, the implementation of the business judgment rule doctrine to be applied in an Individual PT can also be done by issuing related rules that provide basic instructions and guidelines on how to implement the business judgment rule doctrine to be applied in an ILLC.

4. CONCLUSION

Relevance related to the implementation of the business judgment rule doctrine for *PT Perseorangan* or ILLC because it can be oriented towards strengthening and empowering ILLC which is dominated by MSMEs. The implementation of the business judgment rule doctrine for ILLC can also increase the competitiveness of ILLC because it can increase innovation from the leadership of ILLC to be more optimal and maximum in managing ILLC and not afraid of various risks that exist. Viewed from a progressive legal perspective, the reconstruction of the implementation of the business judgment rule doctrine for ILLC can be done through analogous legal construction because ILLC and PT in general are substantively the same. This means, what applies in a PT in general also applies in an ILLC. To optimize the implementation of the business judgment rule doctrine for *PT Perseorangan*, it is necessary to establish special rules that regulate guidelines and guidelines in implementing the business judgment rule doctrine for ILLC.

REFERENCES

Journal Article

- Anggreany Arief, Rizki Ramadani. "Omnibus Law Cipta Kerja Dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas." *Al Adalah* 6, no. 2 (2021): 110.
- Aulia, Yassar, Ali Abdurahman, and Mei Susanto. "Fundamental Principles of the Legislation Process." *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 6, no. 1 (2021): 41-64. <https://doi.org/10.22373/petita.v6i1.109>.
- Darmawangsa, Williem. "Interpretasi Yang Salah Mengenai Business Judgment Rule Pada Substansi Dan Struktur Hukum Di Indonesia." *Unes Law Review* 5, no. 3 (2023): 1356-68.
- Disantara, Fradhana Putra, Bayu Dwi Anggono, and A'An Efendi. "Mendudukan Norma Etika: Perspektif Teori Keadilan Bermartabat Terhadap Relasi Etika Dan Hukum."

Rechtsidee 10, no. 2 (2022): 1–13. <https://doi.org/10.21070/jihr.v10i0.773>.

- Efendi, A'An, and Fradhana Putra Disantara. "Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?" *Yuridika* 37, no. 2 (2022): 329–66. <https://doi.org/https://doi.org/10.20473/ydk.v37i2.33364>.
- Eko Priyono, Agus Surono, Sadino. "Doktrin Business Judgment Rule Dalam Memberikan Perlindungan Hukum Kepada Direksi BUMN (Studi Kasus PT. PLN)." *Jurnal Hukum Dan Kesejahteraan* 7, no. 2 (2022): 30.
- Elvlyn, Elvlyn, and Delpedro Marhaen. "Pengaruh Undang-Undang Cipta Kerja Terhadap Digitalisasi UMKM Di Tengah Pandemi." *Justisi* 8, no. 2 (2022): 82–94. <https://doi.org/10.33506/js.v8i2.1707>.
- Gede Agus Kurniawan, I. "The Existence of Copyrights on Traditional Cultural Expressions Held by the State: Implications and Orientations." In *Intellectual Property - Global Perspective Advances and Challenges [Working Title]*. IntechOpen, 2023. <https://doi.org/10.5772/intechopen.1001312>.
- Hamadziripi, Friedrich, and Patrick C. Osode. "A Critical Analysis of Zimbabwe's Codified Business Judgment Rule and Its Place in the Corporate Governance Landscape." *Law, Democracy and Development* 25, no. 2021 (2021): 1–29. <https://doi.org/10.17159/2077-4907/2021/1dd.v25.20>.
- Josková, Lucie. "The Business Judgment Rule in the Czech Republic." *Acta Universitatis Carolinae Iuridica* 68, no. 3 (2022): 37–47. <https://doi.org/10.14712/23366478.2022.34>.
- Kurniawan, I Gede Agus, and Lourenco de Deus Mau Lulo. "Legal Protection Orientation And Formulation For Traditional Musical Instruments As Patents: An Inclusive Legal Paradigm." *Jurnal Dinamika Hukum* 23, no. 2 (2023): 325–39.
- Kurniawan, I Gede Agus, Lourenco de Deus Mau Lulo, and Fradhana Putra Disantara. "IUS Constituendum of Expert Advisor in Commodity Futures Trading: A Legal Certainty." *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (2023): 31–45. <https://doi.org/https://doi.org/10.29303/ius.v11i1.1170>.
- Mas Aryani, Nyoman, Ayu Putu, Laksmi Danyathi, and Bagus Hermanto. "Quo Vadis Protection of The Basic Rights of Indonesian Workers: Highlighting The Omnibus Legislation and Job Creation Law." *Pandecta Research Law Journal* 17, no. 1 (2022): 103–20. <https://doi.org/10.1017/S0010417517000044.3>.
- Mohamad Zen, Luthfi, and Yeti Sumiyati. "Problematika Hukum Pengelolaan Usaha Mikro Dan Kecil Sebagai Perseroan Perorangan." *Litigasi* 23, no. 1 (2022): 83–100. <https://doi.org/10.23969/litigasi.v23i1.5287>.
- Nabilah Apriani, Ridwan Wijayanto Said. "Upaya Perlindungan Hukum Terhadap Industri Usaha Mikro Kecil Dan Menengah (UMKM) Di Indonesia." *Al Azhar Indonesia* 2, no. 1 (2022): 29.
- Negara, Tunggul Ansari Setia. "Normative Legal Research In Indonesia: Its Origins And Approaches." *ACLJ* 4, no. 1 (2023): 5.
- Pitch, Tamar. "Theory and Sociology of Law: A Dialogue with Luigi Ferrajoli." *Ragion Pratica* 2, no. 2 (2020): 410–15. <https://doi.org/10.1415/98599>.
- Priyo Sembodo, Gatut, Arman Nefi, and Efa Laela Fakhriah. "Urgensi Penerapan Prinsip Business Judgment Rule Dalam Peraturan Pemerintah Nomor 63 Tahun 2019 Tentang

Investasi Pemerintah." *Jurnal Poros Hukum Padjadjaran* 3, no. 2 (2022): 185–208. <https://doi.org/10.23920/jphp.v3i2.789>.

Sudjateruna, Yanuar Agung, and Gde Made Swardhana. "Pengaturan Organ Komisaris Dalam Perseroan Terbatas Perseorangan Menurut Perspektif Undang-Undang Cipta Kerja." *Acta Comitatus* 6, no. 03 (2021): 474. <https://doi.org/10.24843/ac.2021.v06.i03.p2>.

Taufiq, Muchamad, and Fradhana Putra Disantara. "The Principle of People's Authoritative Manifestation in Mining Management: An Inclusive Legal Perspective." *SASI* 29, no. 3 (June 12, 2023): 442. <https://doi.org/10.47268/sasi.v29i3.1329>.

Tektona, Rahmadi Indra, and Dwi Ruli Handoko. "Implikasi Hukum Pailitnya Perseroan Perorangan Terhadap Direksi Di Indonesia." *Jurnal Ilmiah Dunia Hukum* 6, no. 2 (2022): 115. <https://doi.org/10.35973/jidh.v6i2.3106>.

Turmudi, Hadis, Kelik Wardiono, Harun Harun, and Khudzaiyah Dimiyati. "The Implementation of Chaos Theory of Law on The Village Government System in Indonesia." In *Proceedings of the International Conference on Community Empowerment and Engagement (ICCEE 2021)*, 661:272–79, 2022. <https://doi.org/10.2991/assehr.k.220501.031>.

Wardani, Desty Sari. "Perlindungan Direksi Terhadap Keputusan Bisnis Melalui Penerapan Prinsip Business Judgment Rules Di Amerika Serikat, Jepang, Dan Indonesia." *Dharnasisya* 2, no. 3 (2023): 1141. <https://doi.org/10.1080/14735970.2017.1412688>.

Wilda Shafira, Ananda Elena Nur Azizah, Primanadya Dian Pamella, Nabila Ghina Dzakhirah. "Business Judgment Rule Dalam Perspektif Hukum Progresif: Esensi Dan Implikasinya Di Indonesia." *Rechtsidee* 11, no. 1 (2022).

Zahara, Shinta. "Construction Application by Business Judgment Rule Principle as Legal Protection against Directors' Decisions That Harm the Company." *Legal Brief* 11, no. 5 (2022): 2722–4643. <https://doi.org/10.35335/legal.xx.xx>.

Book

Hartarto, Airlangga. *Pembiayaan UMKM*. Jakarta: Raja Grafindo Persada, 2022.

Rahardjo, Satjipto. *Biarkan Hukum Mengalir*. Jakarta: Kompas, 2007.

— — —. *Membedah Hukum Progresif*. 3rd ed. Jakarta: Kompas, 2008.