

THE IMPORTANCE OF *SOLE PROPRIETORSHIP* FOR BUSINESS ACTORS IN BUSINESS ACTIVITIES IN INDONESIA

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Abstract

The purpose of this study is to analyze: 1) How is the existence of individual businesses (Sole Proprietorship) in business activities in Indonesia? 2) What is the Importance of the Legality of Sole Proprietorship for Business Actors in Business Activities in Indonesia? The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) The existence of individual businesses in Indonesia is quite significant in efforts to develop the national economy, moreover it has been strengthened by the Job Creation Law which gives strength as a Legal Entity. 2) For business actors who have a business entity or individual business, having the legality of their business will certainly provide various benefits, including: Legal Protection Facilities, Promotional Facilities, Legal Compliance Evidence, Making it easier to get a project, facilitating business development.

Keywords: *Significance, Legal Protection, Individual Business, Business Actor.*

INTRODUCTION

Background

*Sole proprietorship is the most common form of business and is widely found in the community because of some of its flexibility, sole proprietorship is an individual business form that is only owned by one business owner, so it is often referred to as sole proprietor. While partnership is a form of business that has two or more business owners, so it is often referred to as **partners**. Another more complicated form is the *corporation*, which is owned by shareholders who then determine the board of directors assigned to run the day-to-day activities of the business.¹*

Thus the choice to determine which form of business organization to choose to start business activities is determined by many considerations between economic (financial) considerations, juridical considerations, taxation considerations.

Sole proprietorship is the simplest form of a series of forms or organizations of business. The sole proprietor is the owner of all business assets and he is solely responsible for all debts made in the course of his business activities. Sole proprietorship, a simple form of business that is owned by one individual, the sole proprietor, who is solely and personally responsible for all debts and liabilities of the business and who is entitled to all profits of the business.²

*Kenneth W. Clarkson in his book mentions that A sole proprietorship is the simplest form of business. In this form, the owner is the business; thus, anyone who does the business without creating a separate business entity, such as a partnership or corporation, has a sole proprietorship.*³

Unlike corporations which are usually a unitary business or entity, sole *proprietorship* is more of an individual or personal business. The owner is a person who is personally responsible for all debts and other obligations incurred as a result of the transaction he undertakes, however, in return the owner has the right to all profits obtained from the business activities he conducts. Thus, actually behind some of the flexibility inherent in the form of individual business, this form of business is very high risk for the owner, it is because all assets owned by the owner are dependent on all the debts of the company he makes, so it is likely that the owner of the company will lose all his wealth if the company is insolvent. In terms of law in Indonesia, the establishment of an individual business entity does not recognize specific regulations on how to establish it, including the dissolution of the business entity in the event of bankruptcy. This also has an impact on the extent of responsibility for the debts he makes, the separation between the assets of business entities and their personal assets.

In corporate law theory, business forms or business organizations can be divided into three groups, namely business forms that are centralized **in individual ownership or often known as sole proprietorship**, *and in the form of joint ownership businesses often known as partnership*. In addition, other more complicated forms of business are also known, namely companies or often known as *corporations*. The three forms of business have uniqueness and character that are different from one another, so that each of these business forms has its own advantages and disadvantages.⁴

The sustainability of a business is influenced by various factors, one of which is legal protection for business actors and consumers in the form of business licenses as a manifestation of the elements of business legality. The legality of a business entity in business activities is an identity that legalizes or confirms a business entity so that it gets protection with various legal documents in the eyes of the law and gains the trust of the public⁵

In the laws and regulations in Indonesia, only limited liability companies (PT) and cooperatives have been regulated in a law. Other forms of federal companies such as Maatschap, Firma and CV are still based on the Civil Code and Trade Code. In addition, there are also many forms of individual businesses such as Trade Enterprises (UD) or Trading Companies (PD) whose legality of business forms has not been regulated in the laws and regulations in Indonesia. This individual company is only mentioned in some laws and is still regulated in a ministerial-level rule. In individual businesses, both UD and PD, which can be assumed to be micro-scale businesses, the regulation can be based on Law No. 20 of 2007 concerning Micro, Small and Medium Enterprises (UU-UMKM). However, in this Law-MSMEs there are no provisions related to the legality of business forms, because the law is intended to support the climate of development and empowerment of MSMEs in Indonesia as one of the supporters of economic development. Legality for this individual business can be based on the Implementing Regulation of the Law-UMKM No. 17 of 2013 which states that: A Business License is written evidence provided by an authorized official based on the provisions of laws and regulations as proof of legality stating that Micro, Small Enterprises, and Medium Enterprises have met the requirements and are allowed to carry out certain business activities.⁶

Problem Statement

1. How is the existence of an individual business (*Sole Proprietorship*) in business activities in Indonesia?
2. What is the importance of business legality as a legal protection for individual businesses (*Sole Proprietorship*) for business actors in business activities in Indonesia?

THEORETICAL FRAMEWORK

Business activities in Indonesia have historically been based on special civil law for traders, namely the Commercial Law Code⁷, activities carried out by merchants in the form of business activities with the act of purchase only with the object in the form of movable goods. In contrast to the company as all actions carried out continuously act outward to obtain income, by trading goods or entering into trade agreements. It can be said to be a company in terms of the separation of profit and loss that can be estimated and everything is recorded in a financial book. Various forms of business entities exist in Indonesia in this case the regulation of individual companies is still not regulated such as Limited Liability Companies, Partnership Manditers to cooperatives, The existence of *sole proprietorship* is more often known as a Trading Unit or Trading Company which in practice the business is carried out by individuals or can also be run as a civil partnership.

The categorization of business models in Indonesia is divided into legal entities and non-legal entities. The formation of a legal entity is based on laws and regulations while non-legal entities are not based on legislation in its formation.⁸ The position of sole proprietorship *is different from that of firms and private partnerships because of its position as a sole proprietorship established by the owner, in this case sole proprietor*. The legality of a sole proprietorship based on the type of business, industry, commercial or service.

The advantages possessed are⁹:

- (a). Low cost in forming a sole proprietorship
- (b). The owner has the right to take business decisions
- (c). The owner owns the entire business
- (d). The owner has the right to enjoy for himself all the profits of the business: and
- (e). Owners can easily transfer or sell business entities

The existence of a business entity in Indonesia is a non-legal entity which means that a business entity is established and owned by several entrepreneurs who jointly to obtain profits and a legal entity is a business entity established and owned by several entrepreneurs both by the private sector and whose capital is partly obtained from countries that have met the requirements of a legal entity and can run in the economic sector.

In comparison, there are provisions regarding the establishment of individual companies as contained in Article 153A number 3 of the CIPTAKER Law which states that establishing an individual company can be done by one person and by using a statement of establishment made in Indonesian. This provision does not require that in its submission it does not require a notarial deed of¹⁰ Ratification of an individual company to be submitted to the Ministry of Law and Human Rights to obtain a Decree of Ratification of Establishment as a legal entity in order to later take legal action with third parties.¹¹ The form of a legal entity in the form of an individual company must be categorized as a micro business as contained in Article 35 number 3 of PP No. 7 of 2021 that the capital of micro, small and medium enterprises having a maximum working capital of 1 billion rupiah is categorized as a micro enterprise, capital owned by more than 1 billion to 5 billion is categorized as a small business, While medium enterprises have more than 5 billion to 10 billion capital that does not include building assets and land owned.

Individual companies differ from *sole proprietorship* in the aspect of sole ownership, while individual companies have ownership owned by at least two people. The need for ratification from the competent authority makes an individual company a legal entity. Holders of *sagam* in individual companies for micro and small business scale do not have personal responsibility for the engagement

made on behalf of the company and are not responsible for losses incurred in excess of the shares owned.

Legal protection by providing protection of human rights harmed by others in order to enjoy all rights provided by law.¹² Legal theory is used to study and analyze the form or form or purpose of legal protection, protected legal subjects and objects of protection provided by law to their subjects.¹³ Elements contained in the theory of legal protection include:

- a. The existence of a form or form of protection or purpose of protection
- b. Subjects of legal protection
- c. Objects of legal protection

While Philipus M Hadjon in the form of two protective measures in the form of preventive and repressive legal protection. Protection aimed at preventing is a preventive legal remedy to prevent disputes from occurring in the future and for the people to be given the opportunity to raise objections before a decision by the government is given. This preventive legal protection prevents the occurrence of *sengeta* and against things that can harm the interests of the community or the aggrieved parties.¹⁴

The use of the theory of legal certainty as an analytical knife to find the ideal form of protection of individual business entities, legal certainty is aimed at human birth attitudes, does not question whether a person's mental attitude is good or bad, what is considered is how his outward actions are. Legal certainty does not sanction someone who has a bad mental attitude, but what is sanctioned is a manifestation of that bad mental attitude to make it a real or concrete action. According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions can and cannot be done. And the second is in the form of legal security for individuals from government arbitrariness because with the general rules, individuals can know what the state can charge or do to individuals.¹⁵

Certainty in or from the law will be achieved if the law is based on the law, in which there are no conflicting provisions. The law is made based on legal reality and the law has no legal terms that can be interpreted differently. In addition, it is stated that certainty means that in concrete terms both parties to the dispute can determine their position. The duty of law is to ensure certainty in relationships found in social associations. Gustav Radbruch stated 4 (four) basic things related to the meaning of legal certainty, namely:¹⁶

- a. that law is positive, meaning that positive law is legislation.
- b. That law is based on facts, that is to say, it is based on reality.
- c. that facts must be formulated in a clear way so as to avoid confusion in meaning, while being easy to implement.
- d. Positive law should not be easily changed.

RESEARCH METHODOLOGY

1. Types of Research

Normative juridical research refers to legal norms contained in laws and regulations and legal norms that exist in society. In addition, by seeing the synchronization of a rule with other rules in a hierarchical manner.¹⁷ The law that applies at a certain time and place, namely a written rules and norms officially formed and promulgated by the ruler, in addition to written laws that effectively regulate the behavior of community members, in¹⁸ this study is studied regarding the existence of

individual business entity actors so that later the ideal form of legal protection of individual companies can be adopted.

2. Research Approach

This research uses *a statute approach* and *conceptual approach*.

- a. *Statue* approach or statutory approach is an approach used to review and analyze all laws and arrangements or regulations related to the legal issue being addressed.¹⁹
- b. *Conceptual Approach* or conceptual approach is to move from the views and doctrines that develop in legal science.

3. Research Data Sources

a. Data Type

The types of data used in this study are primary data and secondary data, namely:

1) Primary Data

Primary data is data obtained through field surveys. Primary data are obtained directly from primary sources such as citizen behavior seen through research.²⁰ Primary data is a very important primary data. Primary data in legal research are data obtained mainly from the results of empirical research, namely research from the results of interviews, observations and documentation carried out directly in the community.

2) Secondary Data

Secondary data is data collected, processed and presented by other parties. Both the form and content of secondary data have been formed and filled in by previous researchers so that subsequent researchers do not have supervision over the collection, management, analysis or construction of data.²¹ This secondary data is obtained from a second source which is complementary. Secondary data includes official documents, books and research results that become the basis and reference material regarding individual business entities *sole proprietorship*.

b. Data Sources

The type of data used in this study is secondary data, while the primary data used is more supportive if needed. Secondary data are data obtained from document materials and wisdom in the form of legislation, court decisions, scientific articles and supporting scientific journals including data obtained from research objects.

4. Data Collection Techniques

The data collection taken in this study uses literature studies, namely data collection by searching, examining and reviewing secondary data.²² In this research, document studies will be carried out as a means of collecting data related to the problems raised, namely literature studies / document studies (documentary study), sourced from laws and regulations, books, official documents, publications and research results.²³

5. Data Analysis

Data analysis is the activity of breaking down the components and then examining the relationship of each of the entire contexts from various points of view. Qualitative data analysis by collecting words that are not processed into numerical data by using sentences that are described logically with added theories to give meaning and interpret each legal material that has been processed to then be

described thoroughly so that a conclusion can be drawn and the results of the research are delivered descriptively.

RESEARCH RESULTS

The existence of an individual business (sole proprietorship) in business activities in Indonesia

Sole proprietorships in Indonesia develop like mushrooms in the rainy season. Grow up. These economic actors greatly influence the economic development in this country. Its activity is very extensive and almost affects the entire life of society and the country. This phenomenon can be seen from the market situation and the increasingly large volume of national trade or industry, increased knowledge and technology that refers to modernization, and the largest tax levy from the state is from business activities.

In addition, its activities become a fulcrum for the community, especially entrepreneurs and workers to get sustenance, in the form of profits generated by the company.

Individual businesses in Indonesia in the form of micro, small and medium enterprises (MSMEs) are an inseparable part of the national business world, which in reality has not been able to realize its role optimally despite the existence of Law Number 20 of 2008 concerning Micro, Small and Medium Enterprises. In the general explanation of Law No. 20 of 2008, it is affirmed that Micro, Small and Medium Enterprises are business activities that are able to expand employment and provide broad economic services to the community, and can play a role in the process of equitable distribution and increase in community income, encourage economic growth, and play a role in realizing national stability. In addition, Micro, Small and Medium Enterprises are one of the main pillars of the national economy that must obtain the main opportunities, support, protection and development as wide as possible as a form of firm alignment with the people's economic business groups, without neglecting the role of Large Enterprises and State-Owned Enterprises.

In economic activities in Indonesia, business actors are still dominated by business entities in the form of small businesses which are generally non-legal entities. The government needs to think about the need for regulation for non-legal entities, especially considering the number of small business entities whose form and status are unclear.²⁴

However, the unclear status of business entities needs attention so that they can develop themselves into established business entities. It is necessary to think about the form of business entities that can be used for MSMEs. In the KUHD there is no regulation of individual business forms, while the partnership of Firms and CVs is no longer in accordance with the current economic conditions of Indonesia, so it is necessary to draft a new law in accordance with economic development.²⁵

The existence of individual businesses after the birth of Law Number 11 of 2020 concerning Job Creation (abbreviated: Job Creation Law), began with the amendment of the definition of limited liability companies. In Law No. 40 of 2007 concerning Limited Liability Companies article 1 point 1 it is stated that "A limited liability company, hereinafter referred to as the Company, is a legal entity that is a capital partnership, established based on an agreement, conducting business activities with authorized capital which is entirely divided into shares and meets the requirements stipulated in this Law and its implementing regulations."²⁶

From the definition according to the Job Creation Law above, there is a new concept in PT namely the phrase "individual legal entity that meets the criteria for micro and small enterprises". The concept of an individual legal entity is different from the principle of PT in the previous Law which was established based on an agreement and is a capital partnership. If we look at the provisions of article 7 paragraph (1) of the Law that "The Company is established by 2 (two) or more people with a notarial deed made

in Indonesian", it means that because PT is identical to the principle established under an agreement and is a capital partnership, the founder of the PT must be at least 2 (two) people. Although in article 7 paragraph (7) the establishment of a PT by 2 (two) people can be excluded, it only applies to SOEs and stock exchange companies, clearing and guarantee institutions and others. This means that in the Law, the exemption from company establishment by at least 2 (two) people is only possible for state-owned companies and companies conducting business activities in the capital market sector and this exemption does not apply to private companies established by the general public²⁷

The Importance of Legality of Sole *Proprietorship* for Business Actors in Business Activities in Indonesia

The concept of an individual company with limited liability contained in the Job Creation Law is further regulated in Government Regulation Number 8 of 2021 concerning the Company's Authorized Capital and Registration of Establishment, Change, and Dissolution of Companies that Meet the Criteria for Micro and Small Enterprises. The concept of an individual company with limited liability is a form of legal entity that provides legal protection to business actors. The trick is through the separation of personal and corporate wealth, while making it easier for business actors to access financing from banks.

The Job Creation Law changes the ratification regime to a registration regime, including for these individual companies. Legal entity status is obtained after registering the statement of incorporation electronically and obtaining proof of registration. Business actors who establish individual companies are also exempt from the obligation to announce in the State Gazette Supplement as a form of bureaucratic simplification.²⁸

Technological advances and an increasingly rapid economy, encourage business actors to develop their businesses in order to compete with other business actors. One way for business actors to survive and continue to develop their business is with the legality of the company or business they are running. So that the business that is being run by business actors runs well and has legality. Of course, this requires an official permit from the government. A business license is a form of permission given by the government to the community to run their business officially. A license stating the legality of the business is very important for everyone who establishes a business to have.²⁹

For business actors who have a business entity or individual business, having the legality of their business will certainly provide various benefits, including:³⁰

1. Means of legal protection

An entrepreneur who has legalized his company will avoid demolition or control actions from the authorities, thus providing a sense of security and comfort for the continuity of his business

2. Promotional Tools

By taking care of these legality documents, entrepreneurs have indirectly carried out a series of promotions.

3. Proof of compliance with the law

By having this element of legality, it indicates that the business has complied with the applicable legal rules, indirectly he has enforced a culture of discipline on himself

4. Make it easier to get a project

In a tender, it always requires that the company must have legal documents stating the legalization of the company. So this is very important later for business development facilities.

5. Simplify business development

For business development, large enough funds are definitely needed to realize it. The funds needed can be obtained by lending to the bank, and these legality documents will be one of the requirements submitted by the bank.

CONCLUSION

The results showed that;

1. The existence of individual businesses in Indonesia is quite significant in efforts to develop the national economy, moreover it has been strengthened by the Job Creation Law which gives strength as a Legal Entity.
2. For business actors who have a business entity or individual business, having the legality of their business will certainly provide various benefits, including: Legal Protection Facilities, Promotional Facilities, Legal Compliance Evidence, Making it easier to get a project, facilitating business development

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