

LEGAL ASPECTS OF THE LEGAL STATUS OF COMPANIES OR BUSINESS ENTITIES IN BUSINESS ACTIVITIES

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Abstract

Companies are always connected with third parties and want to protect honestly run companies ("te goeder trouw"), then it is very important the meaning of the legality of a company in business activities. Legality of a company or business entity is the most important element, because the legality is the identity of a legal or legalized a business entity so recognized by the community. Company legality must be legitimate according to the laws and regulations, in which the company is protected or protected by various documents until it is lawful. Forms of Corporate Legality There are several types of identity that legalize business entities, including: company name, corporate brand, and trading business license. While the benefits of the legality of the company is as a means of legal protection, means of promotion, evidence of compliance with the law, facilitate a project and facilitate business development. The number of companies established without legalizing the company, is very detrimental to other companies that carry out their business activities honestly.

Keywords: Corporate Legality, Business Entity, Legal Protection

INTRODUCTION

Advances and improvements in national development in general, and the growth of economic activity in particular, have led to the expansion of the business world and companies. A company requires corporate legal status, which serves as an official source of information for all interested parties regarding the identity and matters pertaining to businesses and companies established, operating, and headquartered within the territory of the Republic of Indonesia. A company's or business entity's legal status is the most important element, as it constitutes the identity that legitimizes or validates a business entity, thereby ensuring its recognition by society. In other words, a company's legal status must be valid under applicable laws and regulations, whereby the company is protected or supported by various documents, making it legally valid in the eyes of the government in power at that time. The sustainability of a business is influenced by various factors, one of which is the presence of legal status for that business. In a business, this legal status is evidenced by the business license it holds. Examples of documents supporting the company's legal status include: the company's articles of incorporation drawn up by a notary and published in the Official Gazette; the company's taxpayer identification number; a business license; a public nuisance permit (HO, or Hinderordonnantie); a location permit; an environmental permit; and many other permits specific to each business sector.

Companies, as vehicles for economic development, are regulated by the Civil Code, the Commercial Code, and other applicable laws and regulations. In conducting business activities within Indonesia's business legal framework, three types of business entities are recognized: private business entities, state-owned enterprises, and cooperatives. The term "business entity" or "company," as defined in Article Law No. 3 of 1982 on Mandatory Company Registration, is: any form of business that conducts any type of business on a permanent and continuous basis and that is established, operates, and is headquartered within the territory of the Republic of Indonesia, for the purpose of generating profit or revenue. Based on the above definition, there are two key elements inherent in a company: first, the form of the business entity that conducts any type of business—whether in the form of a partnership or a business entity established, operating, and headquartered in Indonesia; and second, the nature of the business, which consists of commercial activities conducted on a continuous basis to generate profit. With the rapid growth of business activities in Indonesia, many entrepreneurs no longer operate their companies independently but instead jointly establish partnerships and corporations, including civil partnerships, firms, limited partnerships, limited liability companies, and cooperatives. Companies are always connected with third parties and seek to protect

businesses operated in good faith (“te goeder trouw”); therefore, the legal status of a company is of paramount importance in business activities, as this legal status constitutes the identity that legitimizes or validates a company, thereby ensuring its recognition by society. The large number of companies established without proper legal registration is highly detrimental to other companies that conduct their business activities in good faith; therefore, it is essential to understand the various forms of corporate legal status, how to obtain them, and the benefits of formalizing a company’s legal status.

LITERATURE REVIEW

The literature review is a critical component of your research paper, providing a comprehensive overview of existing research and theoretical frameworks related to your topic. This section serves to establish the context of your study by summarizing and synthesizing relevant literature, highlighting key findings, methodologies, and gaps in current knowledge.

In this section, you should:

- Identify and critically evaluate previous studies pertinent to your research question. This includes examining the strengths and weaknesses of earlier work, and how they inform your own research.
- Discuss the theoretical frameworks and concepts that underpin your study, providing insights into how they relate to your research objectives.
- Highlight any controversies, discrepancies, or debates within the existing literature, emphasizing areas where your study contributes new knowledge or perspectives.
- Conclude with a clear statement regarding the gaps in the literature that your research aims to address, setting the stage for your study’s significance and intended contributions.

Ensure that the literature review is well-organized, flowing smoothly between topics, and logically leading to your research questions or hypotheses. Proper citations and references are essential to uphold academic integrity and provide credit to original authors.

METHOD

This study employs a normative legal approach that focuses on analyzing the legal norms governing the legality of companies or business entities in their business activities in Indonesia. This approach was chosen because the study aims to conduct an in-depth examination of statutory provisions and legal concepts related to business legality, thereby providing a comprehensive understanding of the legal aspects governing the establishment and operations of companies.

The data sources used in this study are secondary data obtained through a literature review, which includes primary legal materials such as laws and government regulations; secondary legal materials in the form of books, academic journals, and relevant literature; and tertiary legal materials that support the understanding of legal terms and concepts. Data collection was conducted using the documentation method, which involves reviewing and analyzing various written sources related to the research topic.

Data analysis was performed qualitatively using a descriptive-analytical method, systematically describing the forms of corporate legality, the procedures for obtaining legal status, and its benefits in business activities. Subsequently, the analyzed data was interpreted to draw conclusions relevant to the research problem. Using this method, the study is expected to provide a clear and in-depth picture of the importance of corporate legality in supporting business sustainability in accordance with applicable legal provisions.

RESULTS AND DISCUSSION

A. Forms and Procedures for Obtaining Company or Business Entity Legalization

There are several types of identity that legalize a business entity, including:

a) *Company Name*

A company name is the identity used by a company to conduct its business. The company name is attached to the form of the business entity or company, is recognized by the public, is personalized as a particular company, and can distinguish that company from others. Because it is attached to the company, the company name cannot be separated from the company itself. If the company ceases to exist, the company name will also cease to exist. A company name may be given in the following ways:

- a. Based on the personal name of the entrepreneur,

- b. Based on the type of business carried out,
- c. Based on the purpose for which it was established.

In Indonesia, several principles apply regarding the naming of a company. These principles can be described as follows:

- a. Integration of the company name with a personal name,
- b. Integration of the company form with a personal name,
- c. Prohibition on using another company's name,
- d. Prohibition on using another party's trademark,
- e. Prohibition on using a misleading company name.

With regard to company names, it is prohibited to use a name that already exists and has been used previously, even if there is a slight difference. For example, if there is a company called PT Alumni, and a new company emerges with the same name PT Alumni, this is not permitted as it may confuse the public.

Every company name must be validated. Validation begins from the time the deed of establishment is made before a notary, announced in the State Gazette, and registered in the company register. If no other party objects to or contests the use of the company name, it means the name has been acknowledged and becomes legal or valid for use by the company that registered it. Conversely, if there is a party that disputes, contradicts, or does not recognize the registered company name, that party may submit a written objection to the Minister of Trade regarding the registered name, stating the reasons. The objection shall be notified to the relevant entrepreneur and the company registration office. The Minister shall render a decision after hearing the interested parties. If the objection is found to be valid, the Minister shall annul the registration, meaning the company name is not validated.

b) Trademark

A trademark is a tool used to distinguish goods and services produced by a company. Provisions regarding trademarks are governed by Law Number 15 of 2001. According to Article 1 of Law Number 15 of 2001 concerning Trademarks, a trademark is a sign in the form of a picture, arrangement of colors, name, word, letters, numbers, or a combination of such elements that has distinguishing power and is used in trading activities of goods or services.

A sign qualifies as a trademark if it fulfills the absolute requirement of having sufficient distinguishing power (capable of distinguishing), meaning the sign used must have the power to differentiate goods and services produced by one company from those of another. To possess this distinguishing power, the trademark must be capable of providing determination or individualization of the goods or services concerned.

Requirements and Procedures for Application under Article 7 of Law Number 15 of 2001:

- a. The application shall be submitted in writing in the Indonesian language; for trademarks in a foreign language or containing non-Latin letters, a translation into Indonesian must be included.
- b. The application must be signed by the applicant or their representative, accompanied by proof of payment of fees.
- c. An application for two or more classes of goods and/or services may be submitted in a single application as regulated by government regulation. The application letter must include:
 - a) Date, month, and year;
 - b) Full name, nationality, and address of the applicant;
 - c) Full name and address of the representative, if the application is submitted through a representative;
 - d) Colors, if the trademark applied for registration uses color elements;
 - e) Name of the country and the date of first trademark application in the case where the application is submitted with Priority Right.

Examination The completeness of application requirements will be examined by the Director General. If there are any deficiencies, a period of two months from the date of submission will be given to complete them. Once complete, a date of receipt will be given to the application letter. Subsequently, within a maximum period of thirty days from the date of receipt, the application will be forwarded to an examiner for substantive examination, which concerns whether the trademark registration application falls under a trademark that cannot be registered or must be rejected.

According to Article 5 of Law Number 15 of 2001, a trademark cannot be registered if it contains any of the following elements:

- a. Contrary to applicable laws and regulations, religious morality, decency, or public order,

- b. Has no distinguishing power,
- c. Has become public property,
- d. Constitutes or is related to information about the goods or services applied for registration.

According to Article 6 of Law Number 15 of 2001, an application must be rejected if the trademark:

- a. Has similarity in its substance or entirety to another party's trademark already registered for the same class of goods and/or services; to a well-known trademark belonging to another party for the same goods and services; and to a well-known geographical indication,
- b. Constitutes or resembles the name of a well-known person, photograph, or the name of a legal entity owned by another party, unless written consent is given by the rightful party,
- c. Constitutes an imitation of or resembles the name or abbreviated name, flag, emblem, or symbol of a state or national or international institution, unless written consent is given by the authorized party,
- d. Constitutes an imitation of or resembles an official sign, seal, or stamp used by a state or government institution, unless written consent is given by the authorized party.

If the application contains any of the above elements, the applicant shall be notified in writing that their trademark cannot be registered or is rejected. The applicant may submit an objection within thirty days of the rejection. If the objection is accepted, an announcement will be made. If it is not accepted, a decision letter of rejection regarding the registration application will be issued.

Announcement According to Article 25 of Law Number 15 of 2001, the announcement shall include:

- a. Full name and address of the trademark owner and their representative,
- b. Class and type of goods and/or services for which the trademark is applied,
- c. Date of receipt,
- d. Name of the country and date of first trademark registration receipt in the case where the application was submitted with priority right,
- e. Sample of the trademark.

The announcement shall last for three months and be carried out by:

- a. Publishing it in the Official Trademark Gazette issued periodically by the Directorate General; and/or
- b. Placing it in a special medium that is easily and clearly visible to the public, provided by the Directorate General.

Objections and Rebuttals to Trademark Registration Based on Article 24 of Law Number 15 of 2001, any party may submit a written objection to a trademark within three months, stating the reasons and accompanied by strong evidence. A re-examination may be conducted accordingly. The Directorate General must send a copy of the objection letter to the applicant within fourteen days of receiving the objection, and the applicant must reply with a rebuttal within a maximum period of two months.

A Trademark Certificate shall be issued to the individual or legal entity that submits a registration application no later than 30 days after the trademark is recorded in the General Register of Trademarks (GRT). The trademark certificate also contains the period of validity of the trademark, which according to Article 28 of Law Number 15 of 2001 is 10 years from the date of receipt and may be renewed. Such renewal is carried out 12 months before the expiry of the trademark's term and is extended for the same period, namely 10 years. The certificate contains:

- a. Full name and address of the registered trademark owner or their representative;
- b. Date of filing and date of receipt;
- c. Name of the country and date of first application if submitted using Priority Right;
- d. The trademark label registered;
- e. Class and type of goods and/or services for which the trademark is registered;
- f. Period of validity of the trademark.

Transfer of Registered Trademarks

a. Transfer of Rights Under the provisions of Article 40 of Law No. 15 of 2001, rights to a registered trademark may be transferred or assigned through inheritance, bequest, grant, agreement, or other causes permitted by laws and regulations. Such transfer must be applied for registration to the Directorate General of Intellectual Property Rights to be recorded in the General Register of Trademarks; if not recorded, it shall have no legal effect on third parties.

b. License Similarly, under the provisions of Articles 43–48 of Law Number 15 of 2001 concerning Trademarks, the owner of a registered trademark is entitled to grant a license to another party through an agreement, and such license must be recorded with the Directorate General of Intellectual Property Rights. The trademark owner retains the right to use the trademark and to grant licenses to other parties. The registered trademark owner is entitled to royalties.

c) Trading Business License (SIUP)

Every company engaged in trading activities is required to hold a Trading Business License (Surat Izin Usaha Perdagangan/SIUP), which is a license granted by the Minister or an appointed official to an entrepreneur to lawfully carry out trading business activities, whether for small, medium, or large companies, with the exception of small individual enterprises. To obtain a SIUP, the company must submit a Business License Application (Surat Permohonan Izin/SPI), which is a form containing details of the company and its business activities, and the entrepreneur must also pay a certain amount of money as an administrative fee.

A SIUP is issued based on the domicile of the owner or person responsible for the company. If the company owner is domiciled outside the company's place of business, they must appoint a responsible person/proxy based on a domicile confirmed by an identity card (KTP) in the place where the SIUP is issued.

Procedures for Applying for a SIUP The owner/person responsible for the company must complete and sign the SPI and attach the following documents:

- a. A copy of the Company Deed of Establishment/Notarial Deed and ratification from the Ministry of Justice or the competent authority for legally incorporated companies.
- b. A copy of the Company Deed of Establishment/Notarial Deed registered with the District Court for companies in the form of a partnership.
- c. A copy of the Business Location Permit (Surat Izin Tempat Usaha/SITU) from the Regional Government if required under the Nuisance Act/Hinder Ordonnantie (HO), or for those not required, a Business Location Statement from the local official suffices. A copy of the identity card (KTP) of the company owner/person responsible.
- d. Two photographs sized 3x4 cm of the company owner/management.
- e. A copy of proof of payment of the Security Deposit and Administrative Fees.

An application for a SIUP will receive an approval or rejection decision within a maximum of 7 days from the date the SIUP application is received by the licensing official for Java and Bali, and 14 days for outside Java and Bali, except for the Riau Islands, inland Central Kalimantan, Central Sulawesi, and Irian Jaya, where the maximum period is 30 days. The speed of processing and issuance of the SIUP is influenced by infrastructure and transportation, communication facilities, and geographical conditions; therefore, the time limits for approval or rejection differ between Java and Bali and regions outside of Java and Bali, especially for the Riau Islands, inland areas of Central Kalimantan, Central Sulawesi, and Irian Jaya.

These time limits are calculated from the moment the Business License Application (SPI), accompanied by complete documents, is officially received by the licensing official. If a SIUP application is rejected, the reasons for rejection shall be explained in writing to the applicant by the Minister or the appointed official. Applicants whose SIUP application is rejected are given the opportunity to file an objection with an official at a level higher than the official who rejected the application, no later than 14 days after receiving the rejection.

A SIUP may be granted automatically to state-owned enterprises, cooperatives, and small trading companies in the economically disadvantaged group that are not in the form of cooperatives. Applications for trading business licenses submitted by state-owned enterprises established under applicable laws and regulations, or cooperatives that have been legally incorporated, are automatically granted a SIUP, meaning they will not be rejected.

Suspension and Revocation A SIUP may be suspended if the company concerned:

- a. Is currently being examined in court proceedings on charges of committing an economic crime or other acts related to its business activities, based on evidence of examination issued by the court.
- b. Has received three written warnings from the authorized official who issued the SIUP for violating the following provisions:
 - a) Failure to report the cessation of business activities/closure of the company, including branch/representative offices.
 - b) Failure to report the opening of a branch/representative office.
 - c) Failure to provide data/information on business activities in accordance with applicable regulations.
 - d) Failure to fulfill tax obligations to the government in accordance with applicable regulations, based on a written request from the local Tax Service Office.

The suspension period of a SIUP is a maximum of one year, unless the matter is still under judicial review. The suspension is carried out by the Head of the Regional Office of the Department of Trade or the Head of the Department of Trade Office that issued the SIUP, or their representative, by issuing a Decree. A suspended SIUP may be reinstated if:

- a) The company concerned is declared not proven to have committed an economic crime, pursuant to a final and binding court decision.
- b) The company concerned has heeded the warning and fulfilled its obligations in accordance with the established provisions.

A SIUP shall be revoked if the company holding it:

- a) Has been sentenced by a court with a final and binding legal decision.
- b) Does not meet the requirements to carry out trading activities, namely:
- c) No longer meets the requirements for obtaining a SIUP.
- d) Misuses the SIUP by deviating from the business field and type of business activity stated in the SIUP.
- e) Violates prohibitions in the field of trade in accordance with applicable regulations.

Revocation of the SIUP is carried out by the Head of the Office responsible for trade or the official responsible for the implementation of the local One-Stop Integrated Service (Pelayanan Terpadu Satu Pintu). A company whose SIUP has been revoked may apply for a new SIUP one year after the date of revocation, and if approved, it will be treated as a new company.

B. Benefits of Company Legalization

Based on government regulations and the advantages to be gained, an entrepreneur who takes care of their company's legality through a process that is not overly complicated and at a relatively modest cost will have secured a guarantee for the continuity of their business. On the contrary, if legalization is neglected, the entrepreneur will face difficulties in their business activities. Apart from feeling threatened by enforcement actions from authorities, they will also find it difficult to develop their business toward a better direction.

By possessing the required permits as a form of company legality, the following benefits will be obtained:

a) Legal Protection

An entrepreneur who has legalized their company will be protected from demolition or enforcement actions by the authorities, thereby providing a sense of security and comfort regarding the continuity of their business.

b) Promotional Tool

By processing the legality documents, the entrepreneur has indirectly carried out a series of promotional activities.

c) Proof of Legal Compliance

Having the elements of legality demonstrates that the entrepreneur has complied with applicable legal regulations; indirectly, they have cultivated a culture of discipline within themselves.

d) Facilitates Obtaining Projects

In a tender process, it is always required that the company possesses legal documents establishing its legalization. This is therefore very important as a means of business development.

e) Facilitates Business Development

Business development certainly requires a considerable amount of funding to realize. The required funds can be obtained through loans from banks, and these legality documents will be one of the requirements requested by the bank.

CONCLUSION

The legal status of a company or business entity is the most important element, as it constitutes the identity that legitimizes or validates a business entity so that it is recognized by the public. A company's legal status must be valid under the law and regulations, whereby the company is protected or supported by various documents until it is legally recognized. Every company name must be officially approved; this process begins with the execution of the articles of incorporation before a notary, followed by publication in the State Gazette and registration in the corporate registry. If no other party objects to or disputes the use of that company name, it means the name has been recognized and is legally valid for use by the company that registered it. A company with legal standing provides its owner with assurance regarding the company's continuity, such as access to legal protection, promotional tools, proof of legal compliance, easier access to projects, and smoother business development.

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