

Existence Of Sole Proprietorship In Business Activities In Indonesia

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Abstract: Company law in Indonesia does not yet regulate individual business entities. The absence of regulation of individual business entities means allowing the existence of such business entities in a state of no legal certainty. Lack of legal certainty on the existence of individual business entities has the potential to harm business actors and the user community. The form of individual business/sole proprietorship is chosen by many business actors in carrying out their business activities, however it is not realized the advantages and disadvantages of choosing the form of individual business.

Keywords : Company law, individual business entities, sole proprietorship, legal certainty.

1 INTRODUCTION

In many countries entrepreneurs have been able to encourage business activities by creating and providing new products and services (Van Stel, Carree & Thurik, 2005). Entrepreneurs have been able to provide employment for many people by paying him as an employee or agent, at the macro level his role has been able to drive the country's economic growth (Nkechi, Emeh Ikechukwu & Okechukwu, 2012). However, entrepreneurs who decide to carry out business activities both domestically and internationally, must decide to determine what form of business organization will be chosen in starting a business activity. Some choices of business organization forms are sole proprietorship, general partnership, limited partnership, corporation, and limited liability company, or in the form of other business organizations available, such as franchise, joint venture (Cheeseman, 2001; Santoso, 2019). Sole proprietorship is the most common form of business and is often found in the community because of some of the flexibility it has. Sole proprietorship is a form of individual business that is only owned by one business owner, so it is often referred to as sole proprietor. Partnership is a form of business that has two or more business owners, so often referred to as partners. Another more complicated form is corporation, which is owned by shareholders who then determine the board of directors assigned to carry out daily business activities. The choice to determine which business organization to choose will depend on many factors, including costs that must be provided to take care of certain forms of business organization; capital that must be provided to start a business with certain business organizations; flexibility in management in relation to decision making; extensive personal accountability; and tax considerations. Thus the choice to determine which form of business organization to choose to start a business activity is determined by many considerations including economic and financial considerations, legal considerations, tax considerations. This study aims to analyze the existence and basic character of an individual business entity (sole proprietorship) compared to other forms of business entity and the dynamics of individual business forms (sole proprietorship) made the choice of many business actors in carrying out their business activities, mainly from the profit and loss specs of choosing individual business forms.

2 EXISTENCE AND BASIC CHARACTER OF INDIVIDUAL BUSINESS ENTITY/SOLE PROPRIETORSHIP

Sole proprietorship is the simplest form of a series of forms or business organizations. Sole proprietor is the owner of all business assets and he is fully responsible for all the debts incurred in 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 the right to all profits of the business (Schneeman, 1993). Clarkson et al. (1993) in his book mentions that A sole proprietorship is the simplest form of business. In this form, the owner is the business; thus, whoever does the business without creating a separate business entity, such as a partnership or corporation, has a sole proprietorship. Henry R. Cheesemann (2001) explained that sole proprietorship as a form of business where the owner is actually the business, the business is not a separate legal entity. It was further explained that the main characteristic inherent in the sole proprietary business organization model is running a business activity labeled "doing business as", meaning that the sole proprietorship business form is carried out using the name of the owner or with a particular trade name chosen. Sole proprietorship which runs a business with a particular trade name other than the name of the original owner, is often referred to by the abbreviation D.B.A, "doing business as". In several states in the United States, business activities with sole proprietorship that use certain trade names in addition to the name of the owner must register the trade name to get a certificate of trade name, for that the owner must register the fictitious business name statement. In the fictitious business name statement contains several things, including applicant's name and address, the trade name used, address of business activities carried out. In some states in the US, it also requires that the trade name be published in print media that has circulation in the area where the applicant runs his business. Unlike companies which are usually business units or entities, sole proprietorship is more an individual or personal business. The owner is a person who is personally responsible for all debts and other obligations that arise as a result of the transaction, but in return, the owner has the right to all the benefits he gets from his business activities. Thus actually behind some flexibility inherent in the form of individual business, this business form is very high risk for the owner, it is caused by all the assets owned by the owner to

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be borne by all the debts of the company he made, so that the possibility of the owner of the company will lose all his wealth he has if the company is insolvent. In practice, the owner can delegate some of his authority to the agent, however, the authority to make decisions must still come directly from the owner, for which he will be responsible for all actions taken by the agency, workers or employees. In many countries, the form of business organization with sole proprietorship is generally more entity than the form of corporation, however, seen from the income earned by these business actors, typically more income is obtained by companies than individual businesses. This will also have an impact on state revenues from the income tax sector. Although the number of individual businesses is more than companies, in terms of state revenue from the income tax sector, the state income is more derived from corporate income tax than income tax from individual businesses. From the legal point of view in Indonesia, the establishment of an individual business entity is not familiar with specific regulations on how to establish it, including the liquidation of the business entity in the event of a bankruptcy situation. business entity with 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 that are often known as partnership. In addition, there are also other more complicated forms of business, namely companies or often known as corporations. Some references mention that corporations are forms of business that are part of partnerships, but some other references mention that corporations are forms of business that are separate from partnerships. These three forms of business have their uniqueness and character which are different from one another, so that each of these forms of business has their respective advantages and disadvantages. In general, when compared to the characteristics of the three forms of business organization, sole proprietorship, partnership, corporation, are as follows (Clarkson, 1992);

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|---|--|---|--|
| | <i>owner's death</i> | <i>or more of the partners, by withdrawal of a partner, by bankruptcy</i> | |
| <i>Transferability of interest</i> | <i>Interest can be transferred, but individual's proprietorship then ends.</i> | <i>Although partnership interest can be assigned, assignee does not have full rights of a partner</i> | <i>Share of stocks can be transferred</i> |
| <i>Management</i> | <i>Completely at owner's discretion</i> | <i>Each general partner has a direct and equal voice in management unless expressly agreed otherwise in the partnership agreement</i> | <i>Shareholders elect directors who set policy and appoint officers</i> |
| <i>Taxation</i> | <i>Owners pays personal taxes on business income</i> | <i>Each partner pays pro rata share of oncome taxes on net profits , whether or not they are distributed</i> | <i>Double taxation- corporation pays income tax on net profits, with no deduction for devidends, and share holders pay income tax on disbursed devidends they receive.</i> |
| <i>Organizational fees, Annual license fees, and Annula reports</i> | <i>None</i> | <i>None</i> | <i>All required</i> |
| <i>Transaction of business in other states</i> | <i>Generally no limitation</i> | <i>Generally no limitation</i> | <i>Normally must qualify to do business and obtain certificate of authority</i> |

TABLE 1
MAJOR BUSINESS FORMS

| <i>Characteristics</i> | <i>Sole Proprietorship</i> | <i>Partnership</i> | <i>Corporation</i> |
|---------------------------|--|---|---|
| <i>Method of creation</i> | <i>Created at will by owner</i> | <i>Created by agreement of the parties</i> | <i>Charter issued by state-created by statutory authorization</i> |
| <i>Legal Position</i> | <i>Not a separate entity; owner is the business</i> | <i>Not a separate legal entity in many states</i> | <i>Always a legal entity separate and distinct from its owners- a legal fiction for the purposes of owning property and being a party to litigation</i> |
| <i>Liability</i> | <i>Unlimited liability</i> | <i>Unlimited liability(except for limited partners in limited partnership)</i> | <i>Limited liability of shareholders- share holders are not liable for the debts of the corporation</i> |
| <i>Duration</i> | <i>Determined by owner; automatically dissolved on</i> | <i>Terminated by agreement of the partners, by the death of one</i> | <i>Can have perpetual existence</i> |

Table 1 showed the flexibility of the establishment of individual business entities compared to other forms of business entities. In general, the way of establishing an individual business entity does seem flexible, because there are no regulations governing formalities, procedures, and the establishment of individual business entities. However, the absence of regulations governing individual business entities has an impact on various aspects: (a) aspects of the establishment of business entities; (b) legal status; (c) responsibilities to third parties; (d) the time of establishment; (e) transfer of authority; (f) management, taxation; (g) business expense expenses; (h) authority to conduct transactions with third parties.

3 ADVANTAGES AND DISADVANTAGES OF RUNNING AN INDIVIDUAL BUSINESS/SOLE PROPRIETORSHIP

There are several advantages of running a business with an individual business form compared to a company business form, namely: there is a full management authority, minimal formalities and regulatory and reporting requirements, low cost of organization, income tax benefits (Schneeman., 1993). Full

management authority, meaning that the business owner has full authority to manage his business activities in a variety of ways that are considered good without having to ask for approval from his business partner or board of directors as part of other forms of business. The individual business owner does not need bureaucracy or time delays in the process of making his business decisions, as this is required in other forms of business. An individual business owner can also delegate part of his authority by paying workers or employees or agents, but all are under the control of the individual business owner. Minimum formalities and regulatory and reporting requirements, in many countries sole proprietorship does not arise because of regulations, therefore very little formality must be followed to establish this business. However, this form of business must also be subject to a number of conditions that are coercive, such as the matter of licenses, taxation rules, which are generally coercive rules that are imposed on all forms of business, including individual businesses. In addition, numbers are usually also things that are related to the tax identification principal number (tax identification) must be followed. In addition to this, if the business activity is carried out using a name other than the personal name of the individual business actor, in some states in the United States, where the business activity is carried out, requires registration to obtain a certificate assumed name, trade name, or fictitious name (Schneeman., 1993). Certificate of assumed name, trade name, or fictitious name, a certificate, granted by the proper state authority to an individual or an entity, that grants the right to use an assumed or fictitious name for the transaction of business in that state. Low cost of organization, the rules regarding the requirements for the establishment of individual businesses and the formalities needed at the time of establishment to start an individual business are very minimal. As a result, the costs required to start an individual business and the maintenance costs of an individual business are relatively low. There is no minimum capital requirement that must be provided to start an individual business, if there is any - it is likely to only be related to the registration fees (filling fees) with the government. Some possible costs that must be incurred are costs associated with legal consulting services when using the services of a legal consultant in starting an individual business. It may also be related to the cost of publishing a certificate of assumed name, trade name, or fictitious name. Income tax benefits, individual businesses have the advantage associated with the avoidance of double taxation, which often occurs in the form of business enterprises. This double taxation refers to the situation of double taxation of receipts obtained from business activities. The first income tax is imposed on the level of income obtained by the company and the second time is subject to income tax on individuals in the form of income tax through salaries received by employees or charged to dividends paid to shareholders. Some disadvantages of running a business in the form of an individual business/trading business or sole proprietorship do bring some advantages as mentioned earlier, but there are also some losses, among others; unlimited liability, lack of business continuity, no diversity in management, difficulty in transferring proprietary interest, limited ability in raising capital, and tax disadvantages (Schneeman., 1993). Unlimited liability, one of the most significant losses of running a business with an individual business form is the unlimited liability of the individual business owner. the individual business owner will be fully

responsible alone for all debts and other obligations arising from his business activities, including being responsible for the actions of employed people or agents appointed in carrying out his business activities, which are carried out within the scope of his work. The responsibility includes both the assets of the business entity and the personal assets of the business owner. Thus there is no separation of business entity assets with personal assets, all of these assets are borne by the debts incurred in conducting business. Insurance can be used as a means of reducing the risk of liability, however, not all individual business risks will be borne by the insurance company given the high level of risk. Lack of business continuity, the continuity of an individual's business is very dependent on the existence of the individual business owner, thus death or illness that may be suffered by the individual business owner, can tie the cessation of the business, even though the business owner has several employees who run the business or have an agent in running the business. The agency relationship will also end when the principal, the authorizer, dies. In some cases, the business owner can appoint a person who represents him for the continuity of the business, which is often known as legatee (person named in a will to be recipient of property.). However, if the business management's decision is very dependent on the owner, the business activity will also experience difficulties in carrying out its activities. No diversity in management, individual business owners are the central figures of all business management decisions, thus there is a centralistic and monopolistic tendency, there is no variation in business management decisions. In an individual business that has just been initiated, it is likely that the business owner does not have enough experience and not enough expertise in company management matters, unlike the directors or shareholders in the company. Difficulty in transferring proprietary interest, when there is a situation of having to sell business assets of individual businesses, then the transfer of all interests / property of individual businesses will experience difficulties, it is because these business activities all use the identity of individual business owners. The sale of assets of individual business owners may also be expensive unlike the sale of assets of companies that have gone public, which can sell their shares through capital markets at relatively affordable prices. The sale of individual company assets may not only be difficult but also time consuming, and expensive, because some individual business assets require an appraisal, or revaluation of the economic value, of the assets to be sold. Another difficulty that arises is calculating the economic value of goodwill from the individual business. Goodwill is an intangible asset owned by the company that is derived from its favorable public image includes expectations of continued business from the favor of the public. As in economic theory, goodwill is derived from the reputation the company builds on the public image of a company, including the expectation of the business entity's business continuity. Limited liability to raise the capital, in some cases it is likely that individual businesses will have difficulty getting capital, both to start a business or develop a business. Lending financial institutions usually require guarantees and the feasibility of certain businesses to be funded. Relying on individuals for obtaining large loan funds will be difficult to realize, not to mention the business plans depicted on individual businesses may not be enough to convince financial institutions to provide capital loans in large enough amounts.

4 CONCLUSIONS

Legal regulations of companies in Indonesia have not touched the existence of individual business entities. The absence of regulation in an individual business entity is the same as allowing the existence of the business entity in a state of no legal certainty. The absence of legal certainty for the existence of individual business entities has the potential to harm the business actors themselves and the user community. The form of an individual business/sole proprietorship is made the choice of many business actors in carrying out their business activities, however the aspects of the advantages and disadvantages of choosing that individual business form are not realized.

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