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## Legal Perspective On The Legality Of A Company Or Agency In Conducting Business

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**Abstract :** *In a company, it will always be connected to third parties and want to protect the company that is run honestly ("te goeder trouw"), so the legality of a company is important in business activities. The legality of a company or business entity is the most important element, because legality is the identity that legalizes or validates a business entity so that it is recognized by the public. The legality of the company must be valid according to laws and regulations, where the company is protected or covered by various documents until it is legal in the eyes of the law. Forms of Company Legality There are several types of identities that legalize a business entity, including: company name, company brand, and trade business license. While the benefits of company legality are as a means of legal protection, a means of promotion, proof of compliance with the law, making it easier to get a project and facilitating business development. The large number of companies that are established without legalizing the company is very detrimental to other companies that run their business activities honestly.*

**Keywords:** *Legality, company and business activities*

### 1. INTRODUCTION

The progress and development of national development in general, as well as the growth of the economic sector in particular, have encouraged the development of the business world and companies. (Azizah & Maulana, 2023) For this reason, every company requires legality that functions as an official source of information regarding identity and everything related to the business world and companies operating in the territory of the Republic of Indonesia. The legality of a company or business entity is a very important part because it functions as a validation that provides legal status to the business entity, so that it is recognized by the public. Thus, the legality of the company must be valid based on applicable laws and regulations, where the company receives legal protection through various documents that validate it in the eyes of the law by the authorized government at that time. (Indrawati & Rachmawati, 2021)

The sustainability of a business is affected by various aspects, one of which is the existence of a legal aspect in the business. In a business, the legality factor is reflected through the ownership of a valid business license. Some examples of documents that support the validity of the company include: the company's deed of establishment by a notary and announced in the state gazette, the company's main taxpayer number, business license, disturbance permit or HO (Hinderordonnantie), location permit, environmental permit, and many other permits according to their respective business fields. The legal aspect of law refers to the identity that provides validation or legitimacy to a company, so that it is legally recognized by the community in accordance with applicable laws and regulations, and receives protection through official documents recognized by the government (Faziani & Rohman, 2024). Companies as a means of economic development are regulated in the Civil Code,

Commercial Code, and other laws and regulations. (Yogatama et al., 2023) In the context of business activities in Indonesia, there are three types of business entities recognized in the business legal system, namely private business entities, state-owned enterprises, and cooperatives. What is meant by a business entity or company according to Chapter 1 of Law Number 6 of 2023 concerning Job Creation is: "Job Creation is an effort to create jobs by facilitating, protecting, and empowering cooperatives and micro, small, and medium enterprises, improving the investment ecosystem and ease of doing business, and encouraging investment from the Central Government and accelerating the implementation of national strategic projects."

Based on this understanding, there are two main elements contained in a company, namely the form of a business entity that manages each type of business, whether in the form of a partnership or a business entity established, operating, and domiciled in Indonesia, and the type of business that includes business activities that are carried out continuously with the aim of making a profit.

Along with the rapid development of business in Indonesia, many entrepreneurs no longer run companies individually, but instead form partnerships or joint ventures. Some common forms include civil partnerships, firms, limited partnerships, limited liability companies, and cooperatives.

Companies are always connected to third parties and want to protect companies that are run honestly ("te goeder trouw"), so the legality of a company is very important in business activities, because the legality of a company is an identity that legalizes or validates a company so that it is recognized by the community.

The large number of companies that are established without legalizing the company is very detrimental to other companies that carry out their business activities honestly, so it is necessary to know what forms and ways there are to obtain company legality, and what the benefits are of legalizing a company.

## **2. DISCUSSION**

### **A. Forms and Ways to Obtain Legalization of a Company or Business Entity**

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

#### **– Company Name**

A company name is an identity used by a company in carrying out its business activities. This name is tied to the form of the business entity or company, is known to the public, is used as a symbol of a particular company, and functions to distinguish the company from others (Asyhadie, 2005).

Because it is attached to the company, the company name cannot be separated from the company. If the company disappears, the company name will also disappear.

A company name can be given in the following ways:

- a. Based on the personal name of the entrepreneur,
- b. Based on the type of business being carried out,
- c. Based on the purpose of its establishment.

In Indonesia, several principles are adopted regarding naming a company.

These principles can be described as follows:

- a. Blending the company name with the personal name,
- b. Blending the form of the company with the personal name,
- c. Prohibition on using someone else's company name,
- d. Prohibition on using someone else's brand,
- e. Prohibition on using a misleading company name.

In terms of company names, it is prohibited to use a company that already exists and has been used before, even if there are slight differences. For example, there is PT Alumni, then a new company appears with the name PT Alumini. This is not allowed because it can confuse the public.

Every company name must be legalized, legalization begins when 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 or denies or the use of the company name, it means that there has been recognition and the name becomes legal or valid for use by the company that registered it. On the other hand, if there is a party that denies, disputes or does not recognize the registered company name or does not recognize the registered company name, the party can submit a written objection to the Minister of Trade regarding the registered name by stating the reasons. The objection is notified to the entrepreneur concerned and the office

where the company is registered. The Minister will make a decision after hearing the interested parties. If it turns out to be reasonable, the Minister will cancel the registration which means not validating the company name.

– **Brand**

A brand is a sign that can be in the form of a picture, name, words, letters, numbers, or a certain combination of colors (Devi & Wirasila, 2020).

Provisions regarding brands are regulated in Law Number 20 of 2016. According to Law Number 20 of 2016 concerning Brands and Geographical Indications, a sign is in the form of a picture, arrangement of colors, names, words, letters, numbers, or a combination of these elements that have distinguishing power, and are used in trading activities for goods or services. (Habiby et al., 2023)

A sign can be called a brand if it meets the main requirements, namely having sufficient distinguishing power (capable of distinguishing). This means that the sign used must have the ability to distinguish products or services produced by a company from products or services from other companies. In order to have this distinguishing power, the brand must be able to provide a clear identity or determination of the goods or services.

Requirements and Procedures for Application According to Chapter 4 of Law Number 20 of 2016:

- a. Application for Trademark registration is submitted by the applicant or his/her proxy team to the Minister electronically and non-electronically in Indonesian.
- b. The application as referred to in paragraph (1) must include:
  - a) Date, month, and year;
  - b) Full name, nationality, and address of the applicant;
  - c) Full name and address of the proxy if the application is submitted for the trademark through a proxy;
  - d) Colors if the trademark being applied for registration uses color elements;
  - e) Name of the country and date of the first trademark application in the case of an application being submitted with Priority Rights.
- c. The application is signed by the applicant or his/her proxy with proof of payment of fees attached.
- d. In the case of the trademark as referred to in paragraph (1) in the form of sound, the trademark label attached is in the form of a notation.
- e. The application as referred to in paragraph (1) must be accompanied by a statement of ownership of the trademark for which registration is being applied for.

The Director General will conduct an examination of the completeness of the application requirements. If there are deficiencies, the applicant will be given two months to complete them from the date of submission. After the requirements are complete, the application letter will be given a receipt date. Then, within a maximum of thirty days from the date of receipt, the letter will be submitted to the examiner for a substantive examination. This substantive examination aims to determine whether the trademark registration application is included in the category of trademarks that cannot be registered or applications that must be rejected. According to Chapter 20 of Law Number 20 of 2016, a trademark cannot be registered if the trademark contains one of the following elements:

- a. Contrary to applicable laws and regulations, religious morality, decency, or public order.
- b. Does not have distinguishing power.
- c. Has become public property.
- d. Is a description of or related to the goods or services for which registration is requested.
- e. Contains elements that can deceive the information public in the use of the goods/services for which the applicant is requesting registration.

According to Chapter 21 of Law Number 20 of 2016, an application must be rejected if the mark:

- a. a. Is similar in principle or in its entirety to another person's mark that has been registered first for similar goods and/or services; A well-known mark owned by another party for similar goods and services; and a well-known geographical indication.
- b. Is or resembles the name of a famous person, photo and name of a legal entity owned by another person, except with the written consent of the authorized party.
- c. Is an imitation, resembles the name or abbreviation of a name, flag, symbol or emblem of a country, national or international institution, except with the written consent of the authorized party.
- d. Is an imitation or resembles an official sign, stamp or seal used by the state or government institution, except with the written consent of the authorized party.

If the application contains one aspect that does not meet the requirements, the applicant will be notified in writing that his/her trademark cannot be registered or is rejected. The applicant has the right to file an objection to the rejection within thirty days. If the objection is accepted, an announcement will be made. However, if the objection is rejected, a decision letter will be issued stating the rejection of the registration application.

Announcement According to Chapter 25 of Law Number 15 of 2001, the announcement is made by stating:

- a. The full name and address of the trademark owner and his/her attorney.
- b. Class and type of goods and/or services for the trademark for which registration is being applied for.
- c. Date of receipt.
- d. Name of the country and date of receipt of the first trademark registration in the case of an application submitted with priority rights.
- e. Example of a trademark.

The announcement must last for three months and is made by:

- a. Placing it in the Official Trademark Newsletter which is periodically published by the Directorate General; and/or
- b. Placing it in a special facility that can be easily and clearly seen by the public, provided by the Directorate General.

Objections and Objections to Trademark Registration Based on Chapter 21 of Law Number 20 of 2016, any party may file an objection within three months against a trademark in writing, with reasons and accompanied by strong evidence. A re-examination may be conducted against this. The Directorate General must send a copy of the objection letter to the applicant within fourteen days of receipt of the objection, and the applicant must reply to the letter accompanied by a rebuttal within a maximum of two months.

A Trademark Certificate is given to a person or legal entity that submits a registration application no later than 30 days since the trademark is registered in the General Trademark Register (DUM), the trademark certificate also contains the validity period of the trademark, according to the provisions of Chapter 35 of Law Number 20 of 2016 is 10 years from the date of receipt and can be extended. The extension is carried out 6 months before the expiration of the trademark period and is extended for the same period, namely 10 years. The certificate contains:

- a. Full name and address of the owner or attorney of the registered trademark;
- b. Date of submission and date of receipt;
- c. Name of the country and date of the first application if the application is filed using Priority Rights;
- d. Registered brand label;
- e. Class and type of goods and/or services for which the brand is registered;
- f. Validity period of the brand.

– **Transfer of Registered Brands**

- a. Transfer of Rights According to the provisions of Chapter 41 of Law No. 20 of 2016,

rights to a registered brand can be transferred or assigned due to inheritance, will, gift, agreement, or other reasons permitted by laws and regulations. This transfer must be registered with the Directorate General of Intellectual Property Rights to be recorded in the General Register of Brands, if not registered it will not have legal consequences for third parties.

- b. License Likewise, according to the provisions of Chapter 42-45 of Law Number 20 of 2016 concerning Brands, the owner of a registered brand has the right to grant a license to another party with an agreement and must be registered with the Directorate General of Intellectual Property Rights, where the owner of the brand still has the right to use it and grant a license to another party. The owner of a registered brand is entitled to royalties.

– **Trade Business License (SIUP)**

Every company that carries out trading activities is required to have a Trade Business License (SIUP) (Anggraeni, 2022). SIUP is a permit granted by the minister or authorized official to entrepreneurs to carry out legal trading businesses, both for small, medium, and large companies, except for small companies in the form of individuals. To obtain a SIUP, a company must submit a Permit Application Letter (SPI), which contains detailed data regarding the company and business activities, and pay the specified administration fee.

SIUP is issued based on the domicile of the owner or person in charge of the company. For company owners who are domiciled outside the company's domicile, they must appoint a person in charge/power of attorney based on the domicile which is confirmed by an ID card at the place where the SIUP was issued.

Procedures and Procedures for Applying for SIUP The owner/person in charge of the company must fill out and sign the SPI and attach the following documents:

- a. Copy of the Company Establishment Letter/Notary Deed and approval from the Ministry of Justice or authorized agency for companies with legal entities.
- b. Copy of Company Establishment Letter/Notary Deed registered with the District Court for companies in the form of partnerships.
- c. Copy of Business Premises Permit (SITU) from the Regional Government if required by the Disturbance Law/Hinder Ordonnantie (HO) and for those not required, a Business Premises Certificate from the local official is sufficient.
- d. Copy of the ID card of the owner/person in charge of the company.
- e. Two 3 x 4 photos of the owner/manager of the company.
- f. Copy of proof of payment of Security Deposit and Administration Fee.

Applications to obtain SIUP will receive a decision on approval or rejection within a maximum of 7 days from the date the SIUP application is received by the official handling the licensing for the islands of Java and Bali, and 14 days for outside Java and Bali, except for the Riau Islands, the interior of Central Kalimantan, Central Sulawesi, and Irian Jaya areas no later than 30 days. That the speed or slowness of the application, handling, and issuance of SIUP is influenced by factors of infrastructure and transportation facilities, communication, as well as natural and geographical conditions, then the deadline for granting approval or rejection, for the application for a business license (SPI) is applied differently by officials handling licensing for places on the islands of Java and Bali with areas outside Java and Bali, especially for the Riau areas, the interior of Central Kalimantan, Central Sulawesi, and Irian Jaya (Aaker, 2018). The specified time limit starts from when the Business License Application Letter (SPI) along with complete documents are officially received by the official handling the licensing. If the SIUP application is rejected, the authorized official will provide a written explanation regarding the reasons for the rejection to the applicant. Applicants whose applications are rejected are given the opportunity to file an objection to an official who has a higher position than the official who rejected the application, with a maximum time limit of 14 days from the receipt of the rejection. SIUP can be automatically granted to state-owned companies, cooperatives, and small trading companies from the economically weak group that are not in the form of cooperatives. SIUP applications from state-owned companies that are formed based on applicable regulations, or cooperatives that have been legalized as legal entities, will be automatically approved without rejection.

Freezing and Revocation of SIUP can be frozen if the company concerned:

- a. Is being investigated in court because it is accused of committing an economic crime or other acts related to its business activities, which is based on evidence of an investigation issued by the court.
- b. Has received three written warnings from the official authorized to issue SIUP for violating the following provisions:
  - a) Does not report the termination of its business activities/closure of its company, including branch offices/representative offices of the company.
  - b) Does not report the opening of branch offices/representative offices of the company.
3. Does not provide data/information regarding its business activities in accordance with applicable provisions.
- c) Does not fulfill tax obligations to the government in accordance with applicable provisions based on a written request from the local Tax Service Office.



The maximum period for freezing SIUP is one year, unless it is still in the process of being examined by the judicial body. This freezing is carried out by the Head of the Regional Office of the Ministry of Trade or the Head of the Ministry of Trade Office that issued the SIUP, or the representative by issuing a Decree. The frozen SIUP can be disbursed if:

- a. The company concerned is declared not proven to have committed an economic crime in accordance with a decision of the judicial body that has permanent legal force.
- b. The company concerned has heeded the warning and carried out its obligations in accordance with the provisions that have been set.

The SIUP is revoked if the company holding it:

- a. Has been sentenced by a judicial body that has permanent legal force.
- b. Does not meet the requirements to carry out trading activities, namely:
  - a) No longer meets the requirements to obtain a SIUP.
  - b) Misuses the SIUP that deviates from the business fields and types of business activities listed in its SIUP.
  - c) Violates prohibitions in the field of trade according to applicable provisions.

The revocation of SIUP is carried out by the Head of the Service responsible for trade or the official responsible for implementing the local One-Stop Integrated Service. Companies whose SIUP has been revoked can apply to obtain a new SIUP after one year from the date of revocation and if the application is approved, it is treated as a new company.

## **B. Benefits of Company Legalization**

Based on government regulations and the benefits that will be obtained later, an entrepreneur who takes care of the legality of his company. With a process that is not too complicated and costs that are not too large, entrepreneurs have received a guarantee of the continuity of their company. In fact, if the legalization is not taken care of, later the entrepreneur himself will have difficulties in his business activities. In addition to feeling threatened by the authorities, they will also have difficulty developing their business in a better direction.

By having permits as a form of company legality, several benefits will be obtained, including:

- a) Legal protection facility

A businessman who has legalized his company will be protected from demolition or control by the authorities, thus providing a sense of security and comfort for the continuity of his business

- b) Promotion facility

By taking care of these legal documents, the businessman has indirectly carried out a series of promotions.

c) Proof of compliance with the law

By having these legal elements, it indicates that the businessman has complied with the applicable legal regulations, indirectly he has enforced a culture of discipline in himself.

d) Facilitates getting a project

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

e) Facilitates business development

For business development, a large amount of funds are definitely needed to realize it. The funds needed can be obtained through a loan process to the bank, and these legal documents will be one of the requirements submitted by the bank.

The revocation of SIUP is carried out by the Head of the Service responsible for trade or the official responsible for the implementation of the local One-Stop Integrated Service. Companies whose SIUP has been revoked can apply to obtain a new SIUP after one year from the date of revocation and if the application is approved, it will be treated as a new company.

### **3. CONCLUSION**

The legality of a company or business entity is a very important element, because legality functions as an identity that validates or legalizes a business entity so that it is recognized by the public. The legality of the company must be in accordance with applicable regulations and laws, so that the company obtains legal protection through various legally valid documents.

Every company name must be approved, which begins with the creation of a deed of establishment before a notary, announced in the State Gazette, and registered in the company register. If no other party objects or opposes the use of the company name, then the name is considered to have been recognized and is valid for use by the company that registered it.

A company that has valid legality will provide guarantees for business continuity, such as legal protection, facilities for promotion, proof of compliance with regulations, ease in obtaining projects, and smooth business development.

### **REFERENCES**

- Aaker, D. A. (2018). *Brand Equity Management: Leveraging the Value of a Brand* (1st ed.). Mitra Utama.

- Anggraeni, R. (2022). The Importance of Business Legality for Micro, Small and Medium Enterprises. *Eksaminasi: Jurnal Hukum*, 1(1), 77–83.
- Asyhadie, Z. (2005). *Business Law: Principles and Implementation in Indonesia*. RajaGrafindo Persada.
- Azizah, S. N., & Maulana, L. P. (2023). The Influence of State Development Progress on the State Budget Deficit in 2022. *Jurnal Panorama Hukum*. <https://doi.org/10.21067/jph.v8i1.7809>
- Devi, K. M. P., & Wirasila, A. N. (2020). Legality of Limited Liability Companies (Business Entities) in Business Activities. *Business Law*, 1(3), 1–14.
- Faziani, M., & Rohman, A. (2024). PT. Media Akademik Publisher ANALYSIS OF BUSINESS FEASIBILITY STUDY REVIEWED FROM THE ASPECT OF LEGAL LEGALITY TOWARDS THE POSITION OF UMKM. *Jma*, 2(5), 3031–5220.
- Habiby, M. Y., Kurniawan, K., & Haq, L. M. H. (2023). Systematic Settlement of Trademark Disputes Containing Similarities in Creating Business Certainty Based on Law Number 20 of 2016 concerning Trademarks and Geographical Indications. *Indonesia Berdaya*. <https://doi.org/10.47679/ib.2023547>
- Indrawati, S., & Rachmawati, A. F. (2021). Business Legality Education as an Effort to Protect MSME Owners Legally. *Journal of Dedication to Law*. <https://doi.org/10.22219/jdh.v1i3.17113>
- Yogatama, M., Sriwidodo, J., & Widijatmoko, W. (2023). Legal Protection against Default of Core Plasma Partnership Agreement in Issuance of Cultivation Rights. *Indonesian Multidisciplinary Journal*. <https://doi.org/10.58344/jmi.v2i3.187>