

CHAPTER I

INTRODUCTION

A. Background of Research

The Business has always been an interesting topic to be discussed in various national and international forums because it is always dynamic and developed continuously from time to time. It is mainly due to the fact that the benchmark of a country is seen from the progress of the economy where business traffic is the main factor. The government continues to conduct fundamental reform efforts starting from the aspects of regulation, business processes and service systems to be implemented in a short period of time so that the benefits can be felt by business actors.

Efficiency is needed to support business activities that determine economic growth and the need to use information technology to accelerate and facilitate business services through the Electronic Integrated Licensing System. On that basis, the President of the Republic of Indonesia issued Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Services¹.

In accordance with the Constitution of the Republic of Indonesia as stipulated in Article 33, the objective is that the national economy is organized based on economic democracy, with the principles of togetherness, efficiency of justice, sustainability, environmental insight, independence, and by

¹ Humas Menpanrb, 2018, *Kementerian PANRB Gelar Survey Kemudahan Berusaha Di 10 Kota*, <https://www.menpan.go.id/site/berita-terkini/kementerian-panrb-gelar-survey-kemudahan-berusaha-di-10-kota>, (accessed on March 19th 2020 at 8:17 PM).

maintaining a balance of progress and national economic unity. Thus, the national economic democratic system is based on kinship and mutual cooperation of the people, by the people, for the people and together with the people under the leadership and supervision of the government towards social welfare². Economic potentials are very important to be increased in order to accelerate national economic development and realize political and economic sovereignty. In the framework of improving the people's economy that involves micro, small, medium and macro businesses, the increase in economic potential is still in the framework of political economy, which is still directed at the investment policy³.

The International Finance Corporation (IFC) / World Bank Group has conducted a survey of 190 countries around the world, including Indonesia 2012. This survey is carried out by carrying out a quantitative analysis of the existing regulations in a country with two types of data. The first data provides the complexity and cost of the regulatory-making process. And the second data comes from the rules and regulations in every economy. EoDB also uses data from expert respondents to keep accurate data⁴.

This survey aimed to measure the conduciveness of the existing regulatory and policy framework in a relevant country in terms of the start-up of businesses and activities of a local business. The survey was conducted to

² Kementerian Hukum Dan Hak Asasi Manusia, Naskah Akademik Rancangan Undang-Undang Tentang Badan Usaha, page 1.

³ *Ibid.*

⁴ Ade Irawan Taufik, "Evaluasi Regulasi Dalam Menciptakan Kemudahan Berusaha Bagi UMKM", *Rechtsvinding*, Vol 6, No 3 (2017), page 375.

encourage the economy to compete towards more efficient regulation by using measurable benchmarks for reform and as a resource for journalists, academics, private sector researchers and others interested in the business sector. The report ranks each location, and recommends reforms to improve performance in each area. The selected cities were able to compare their business regulations with 190 other cities that were used as survey samples⁵.

There are 10 (ten) indicators to measure the Ease of Doing Business or what is also known as the Ease of Doing Business. The 10 indicators are⁶:

1. Starting a Business;
2. Dealing with Construction Permits;
3. Getting Electricity;
4. Registering Property
5. Getting Credit;
6. Protecting Minority Investors;
7. Paying Taxes;
8. Trading Across Borders
9. Enforcing Contracts; and
10. Resolving Insolvency.

Of the 10 indicators, the total number of procedures, which previously amounted to 9 procedures, has been reduced to 49 procedures. Likewise, the

⁵Yudho Winarto, 2018, *Jurus Pemerintah Mengejar Peringkat 40 EODB*, <https://nasional.kontan.co.id/news/jurus-pemerintah-mengejar-peringkat-40-eodb>, (accessed on January 23rd 2020 at 1:23 PM).

⁶ Vini Vidyacarla, 2019, "Analisis Tentang Akibat Hukum Tidak Dilakukannya Pencatatan Pendaftaran Persekutuan Komanditer Melalui Sistem Administrasi Badan Usaha", (Tesis Pascasarjana, Fakultas Hukum Universitas Gadjah Mada Yogyakarta), page 3.

number of permits that previously amounted to 9 permits was cut into 6 permits. If previously the total time needed was 1,566 days, now it has been shortened to 132 days⁷. The calculation of the total time has not yet calculated the number of days and court costs on the Resolving Insolvency indicator because there is no practice of the new regulation being issued.

During the period of doing business from 2009 to 2019, Indonesia consistently made improvements to the Ease of Doing Business which succeeded in getting Indonesia's position with the best performing country in terms of Ease of Doing Business⁸. Based on the results of the web search www.EoDB.ekon.co.id, it was recorded that according to the World Bank Group in the 2019 doing business report, Indonesia experienced an increase in its Distance to Frontier (DTF)⁹ score by 1.42 to 67.96 compared to the previous year, provided that there was an adjustment in the DTF score. Indonesia is in doing business 2018 due to data correction, so that the DTF Indonesia score for doing business 2018 is revised from 66.47 to 66.54¹⁰. Even so, Indonesia's

⁷ Marolli, 2016, *Paket Kebijakan Ekonomi XII Pangkas Izin Prosedur Waktu dan Biaya Untuk Kemudahan Usaha*, https://kominfo.go.id/content/detail/7401/paket-kebijakan-ekonomi-xii-pangkas-izin-prosedur-waktu-dan-biaya-untuk-kemudahan-usaha/0/artikel_gpr. (accessed on January 23rd 2020 on 12:43 PM).

⁸ Kementerian Koordinasi Bidang Perekonomian RI Capaian Reformasi; “Perbaikan Peringkat Indonesia”, dalam Vini Vidyacarla, *Loc. Cit.*

⁹ The distance to frontier score helps assess the absolute level of regulatory performance over time. It measures the distance of each economy to the “frontier,” which represents the best performance observed on each of the indicators across all economies in the Doing Business sample since 2005. One can both see the gap between a particular economy’s performance and the best performance at any point in time and assess the absolute change in the economy’s regulatory environment over time as measured by Doing Business. An economy’s distance to frontier is reflected on a scale from 0 to 100, where 0 represents the lowest performance and 100 represents the frontier.

¹⁰ Fitri N. Heriani, 2018, *Peringkat Kemudahan Berusaha Indonesia Turun*, In *Langkah Pemerintah*, <https://www.hukumonline.com/berita/baca/lt5be3a63b419ec/peringkat-kemudahan-berusaha-indonesia-turun--ini-langkah-pemerintah/>, (accessed on January 11th 2020 at 3:43 PM).

position in the 2009 “doing business” report experienced a downgrade from 72 to 73¹¹.

In line with this, it is necessary to have an investment climate that is conducive, promotive, can provide legal certainty, justice and efficiency. Furthermore, the government needs to make efforts that can encourage economic growth, including creating the ease of starting a business which is one of the parameters used to measure the ranking of Ease of Doing Business¹². One of the government's obstacles to improving the ease of starting a business in Indonesia is the condition of laws and regulations related to business entities, so legal reform is necessary. One of the agendas of legal reform is to organize laws and regulations so that they can provide legal certainty and provide a sense of justice for the community¹³.

Efficiency is needed to support business activities that determine economic growth and the need to use information technology to accelerate and facilitate business services through the Electronic Integrated Licensing System¹⁴. On that basis, the President of the Republic of Indonesia issued Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Services. Refer to the Article 39 of those Presidential Regulation, the Coordinating Minister for Economic Affairs, as a chairman of the National Task Force was appointed and asked to establish technical instructions and

¹¹ *Loc.Cit.*, Viny Vidyacarla, 2019, “Analisis Tentang Akibat Hukum”, page 3.

¹² *Op.Cit.* Kementerian Hukum Dan Hak Asasi Manusia, Naskah Akademik Rancangan Undang-Undang Tentang Badan Usaha, 2019, page 2.

¹³ *Ibid.*

¹⁴ *Op.Cit.*, Marolli, Kerja Bersama Percepatan Kemudahan ...

guidelines for the implementation of accelerated business licensing in Indonesia.

One of the ten indicators, namely the starting a business indicator, is closely related to the acceleration of business licensing which is one of the ten factors of Ease of Doing Business (EoDB). The President wants service reforms to try to accelerate, simplify and facilitate business services. Electronic Integrated Business Licensing System is the implementation of business service ease reforms which are then regulated in technical guidelines and implementation guidelines for accelerating business licensing, namely Government Regulation Number 24 of 2018 of Electronically Integrated Licensing Service. Then, Government Regulation Number 24 of 2018 is implemented by holding One Single Submission or abbreviated as OSS.

In accordance with Article 5 of Law Number 3 of 1982 concerning Company Registration Requirement every company domiciled and running its business in the territory of the Republic of Indonesia must be registered in the company register. Either by the owner or company management or representatives by providing a valid power of attorney. According to Article 1 letter a of the Company Registration Requirement Law. The definition of a company register, which is a list of official records held according to or based on the provisions of this law and / or its implementing regulations and contains matters which must be registered by each company and approved by the competent official of the company registration office.

Based on Article 22 of the Company Registration Requirement Law, companies whose registration has been legalized in the Company Register are given a Company Registration Certificate (TDP). TDP is valid for a period of 5 (five) years from the date of issue and must be renewed at least 3 (three) months before the expiry date. Apart from that, regarding the administration of the company register it is stated in Article 18 that the person responsible for administering the company register is the Minister. What is meant in the Article is the Minister who is responsible for the trade sector, as referred to in the general provisions of Article 1 letter e of the Company Registration Obligatory Law.

The registration of a Firms that was established based on the provisions of the Article 23 of the Trade Code whose establishment deed was registered through the District Court, now starting August 1, 2018, according to the Article 10 of the Ministry of Law and Human Right Regulation Number 18 of 2018, it must be done through the Business Entity Administration System (SABU) at the Directorate of General Legal Administration (AHU) as regulated in the Regulation of the Ministry of Law and Rights Human Rights Number 17 of 2018 concerning Firms registration.

With the promulgation of the *a quo* ministry of Law and Human Rights Regulation is an AHU effort to simplify and tidy up registration data, Firms and those collected through SABU. In this regulation, there are 3 types of Firms registration regulated in Article 2 of the *a quo* Ministry of Law and Human

Rights Regulation, namely registration of deed of establishment, registration of amendments to Articles of association and registration of dissolution.

The Regulation of the Ministry of Law and Human Rights was promulgated on August 1, 2018, and is effective since the promulgation of the Regulation of the Ministry of Law and Human Rights as stated in its closing provisions in Article 4 of the Regulation of the Ministry of Law and Human Rights Number 17 of 2018 which states that this Ministerial Regulation comes into force on the date of its promulgation. In this regulation, business owners are given a period of 1 (one) year from the enactment of the regulation to register their business entities at SABU.

Registration of the establishment, amendment and dissolution of non-individual business entities that are not legal entities is carried out in a manner determined by the provisions of the Ministry of Law and Human Rights Regulation Number 17 of 2018. Namely by submitting a registration application to the minister through SABU and Human Rights Number 17 of 2018 with the stages described in detail in the Regulation of the Ministry of Law and Human Rights. Then afterwards, the Minister will issue a Registered Certificate (SKT) when the application is received in accordance with Article 14 for each applicant who has met the requirements as regulated in the Regulation of the Ministry of Law and Human Rights.

Thus, since the Ministry of Law and Human Rights Regulation Number 17 of 2018 was promulgated since August 1 2018, so business actors who have non-legal business entities that have been registered at the District Court in

other words before this Regulation of the Ministry of Law and Human Rights is promulgated must register the business entity at SABU on Directorate of General Law Administration (AHU) at the Ministry of Law and Human Rights. Then the Ministry of Law and Human Rights will issue an SKT (Registered Certificate) for the business entity.

According to Article 23 Paragraph (1) of the *a quo* Ministry of Law and Human Rights Regulation, it states that Firms that have been registered in District Courts are given time to record registration for 12 (two years) months after the Regulation of the Ministry of Law and Human Rights is promulgated. In addition, Article 23 Paragraph (2) states that the registration as referred to in Paragraph (1) is permitted to use a name that has been legally used by a Firms that has been registered on SABU . In Paragraph (3), it is stated that the registration recording above is free of charge.

In accordance with the transitional provisions mentioned above, these provisions do not cover legal consequences for Firms that do not re-register into the Business Entity Administration System, in relation to making legal relationships with third parties, considering that currently the government has implemented a business licensing system which integrated electronically. Regulation of the Ministry of Law and Human Rights Number 17 of 2018 also does not regulate the procedure for recording registration through the Business Entity Administration System which is applied to Firms that have been registered in the District Court.

In connection with the above, it is necessary to understand and know the legal consequences of not recording Firms registration through the Business Entity Administration System in terms of having legal relations with third parties. From here, the authors are interested in doing research in the form of a thesis with the title “**The Legal Consequences Of The Un-Reregistered Firms Through The Business Entity Administration System**”.

B. Statements of Problem

1. How does the legal consequences of Firms that do not re-register their business entities in the Business Entity Administration System (SABU) at the online directorate of Public Law (AHU)?
2. What are the legal consequences for the registered Firms and third parties who have already committed legal actions?

C. Objectives of the Research

1. To find out the legal consequences of the non-registration of the Firms on the legal capacity of the Firms; and
2. To find out how a third party who has already taken legal action with a business entity that has not re-registered the business entity.

D. Benefits of the Research

There are some benefits of this research, namely:

1. Theoretical Aspect

This research shows the impact that will be received by non-legal entities, especially Firms and who do not re-register their business entities in the Business Entity Administration System (SABU) at the Directorate

of General Law Administration (AHU) after the issuance of Ministry of Law and Human Rights Regulation Number 17 In 2018, against the legal skills of the business entity and against third parties who have already committed legal actions.

2. Practical Aspect

This research will benefit the government to be able to evaluate the regulations that have been issued.