



Legal Challenges for Digital Startup Development in Indonesia

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Abstract

The high level of internet usage in Indonesia will certainly be in line with the growth of businesses that use the internet as their main part. Companies working on the Internet are known as digital startups. Digital Startup is a group of people who form an organization as a start-up company that produces products in the technology sector. Startups in Indonesia have been on the rise for at least the last decade. This phenomenon is also seen in Gojek and Tokopedia which are popular among Indonesians. With the rapid growth of startups, of course there are challenges to start and grow, one of which is legal challenges. From a legal point of view, in general startups experience problems such as employment relations, company forms, company names, licensing, intellectual property issues and, contracts. Before starting a business, startup business people must thoroughly study the Indonesian laws and regulations governing startup businesses, as well as study the obstacles that will be faced when starting and running their business activities. So that the risk of failure in running a startup business can be minimized. So in this study the researchers analyzed the legal challenges that need to be prepared to be able to build a digital startup. In this study, researchers used a qualitative approach to collect data and utilize all the information on the subject matter. so that 7 important legal challenges can be found and need to be prepared to be able to build a digital startup. The 7 challenges include: Regulations, Legal Entities or Business Entities, Licensing, Protection of Business Competition, Financial Transactions, Crowdfunding, and Venture Capital.

Keywords: *digital law, startup development, information technology.*

INTRODUCTION

Information technology in Indonesia is growing rapidly, according to a survey conducted by the Indonesian Internet Service Providers Association (APJII) in 2016 internet users in Indonesia numbered 132.7 million or 52% of Indonesia's population. Of these, Java users top the list with 86.3 million (65%). This is not only due to the distribution of the population, but also the readiness of the communication network infrastructure on

Java Island which is higher than other islands.¹ Compared to the survey results in 2014, Indonesia has 88 million internet users. This growth is in line with the continued development of gadget technology (smartphones) which is getting cheaper and more competitive, as well as improvements in communication infrastructure by Indonesian telecommunications operators.

The high level of internet usage in Indonesia will certainly be in line with the growth of businesses that use the internet as their main part. The use of the internet has touched almost all areas of life, we can see one example in the economic field.² Companies working on the internet are known as digital startups. The term 'startup' is relatively new to Indonesia. Startups, which are often associated with the development of the technology and communications industry, basically do not have standard rules, both in terms of definition and rules for implementing technology.³ According to researcher Zihramna Afdi, a startup is an organization designed to find the right business model in order to generate maximum profits.⁴ Literally a startup is an act of 'the process of starting a process or business venture', where a company has just been established or is operating and is in the process of developing and researching in order to find the right market.

Startup companies in Indonesia have been growing for at least the last decade. This phenomenon can also be seen with the presence of Gojek and Tokopedia which are quite popular among Indonesian people. This has become an impetus for other entrepreneurs to also form internet-based startups or digital startups.⁵ With the rapid development of start-up companies, of course there are challenges in entrepreneurship and development, one of which is legal challenges. From a legal perspective, Forbes divides the common problems faced by startups into 15 (fifteen) categories, broadly covering employment relations, company forms, company names, licensing, intellectual property issues, contracts and others. Broadly speaking, a number of challenges and mistakes classified by Forbes have to do with the legal aspect in the absence of a legal umbrella that can handle and accommodate the various problems experienced.⁶ The challenges from a legal perspective that are often faced by startup companies can lead to company failure.

¹ Imam Lukito, "Tantangan Hukum Dan Peran Pemerintah Dalam Pembangunan E-Commerce (Legal Challenges and Government's Role in E-Commerce Development)," *Jurnal Ilmiah Kebijakan Hukum* 11, no. 3 (2017): 349–67.

² Dona Budi Budi Kharisma, "MEMBANGUN KERANGKA PENGATURAN STARTUP DI INDONESIA," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 3 (2021): 1443–57, <https://doi.org/10.1108/JFC-09-2021-0193>.

³ Aisyah Assyifa Siti Ismaya Zahra Isfahani Izdihar, "Urgensi Regulasi Khusus Tentang Perusahaan Rintisan (Startup) Dalam Rangka Pengembangan Ekosistem Perusahaan Rintisan Di Indonesia," *Jentera: Jurnal Hukum* 4, no. 1 (2021): 494–494, <https://doi.org/10.1201/9781482270815-178>.

⁴ Z Afdi and B Purwanggono, "Perancangan Strategi Berbasis Metodologi Lean Startup Untuk Mendorong Pertumbuhan Perusahaan Rintisan Berbasis Teknologi Di Indonesia," *Industrial Engineering Online Journal* 6, no. 4 (2017): 1–13.

⁵ Janner Romindo; Muttaqin; Saputra, Didin Hadi; Purba, Deddy Wahyudin; Iswahyudi, M.; Banjarnahor, Astri Rumondang; Kusuma, Aditya Halim Perdana; Faried, Effendi; Sulaiman, Oris Kristianto; Simarmata, *E-Commerce: Implementasi, Strategi & Inovasinya* (Yayasan Kita Menulis, 2019).

⁶ Bushra Samimi, "The Antitrust Impact of Venture Capital Firms on Concentration in the Technology Sector," *Hastings Science and Technology Law Journal* 11, no. 2 (2020), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1096&context=hastings_science_technology_law_journal

The convenience and facilities provided by the government to support the growth of startups in Indonesia, trigger the growth of startup growth which also results in many failures in line with their growth. This is due to too little legal basic business knowledge in building startups. Before starting a business, startup business people must thoroughly study the Indonesian laws and regulations governing startup businesses, as well as study the obstacles that will be faced when starting and running their business activities. So that the risk of failure in running a startup business can be minimized.

METHODS

Method Approach

In this study using a qualitative approach as a strategy to collect and utilize all information related to the subject matter. Qualitative research has the advantage of being able to produce in-depth and comprehensive information on the topic being researched.⁷ This research is descriptive in nature which aims to describe and analyze the roles and synergies between related institutions to support domestic e-commerce development as an effort to increase national economic growth in the digital economy era.

Data Collection

Data collection in this study used the Desk Study method, namely the method of collecting data and information through examination and analysis of data and information using secondary data. This secondary data can be obtained by conducting a literature search. The data sources in this study are literature, articles, journals, scientific research, and internet pages related to the research being conducted.

Data Analysis Technique

The data analysis technique used in this study is an interactive model including data reduction, data presentation and conclusion drawing.⁸ Data reduction and data presentation were prepared at the time the researcher obtained the data needed in the research. After the data collection ended, the researcher tried to draw conclusions based on the verification of the field data.

FINDINGS

Regulation

Indonesia does not yet have regulations that specifically regulate start-ups. In contrast to micro, small and medium enterprises (MSMEs), which have been specifically regulated in Law Number 20 of 2008. Due to the nature of information technology-based businesses, startup business activities also refer to Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE).⁹ A special commission or institution that

⁷ Mardi Arya Jaya, Ridi Ferdiana, and Silmi Fauziyati, "Analisis Faktor Keberhasilan Startup Digital Di Yogyakarta," *Jurnal Universitas Muria Kudus* 4, no. 1 (2017): 167–73, <https://jurnal.umk.ac.id/index.php/SNA/article/view/1261>.

⁸ Ahmad Rijali, "Analisis Data Kualitatif," *Alhadharah: Jurnal Ilmu Dakwah* 17, no. 33 (2019): 81, <https://doi.org/10.18592/alhadharah.v17i33.2374>.

⁹ Siti Yuniarti and Erni Herawati, "Analisis Hukum Kedaulatan Digital Indonesia," *Pandecta* 15, no. 2 (2020): 154–66.

regulates startups. Apart from regulatory issues, regulation and supervision of startup businesses in Indonesia also have unique characteristics. Startup businesses are under 10 (ten) authorities according to their business fields, namely the Ministry of Law and Human Rights, the Ministry of Communication and Informatics, the Ministry of Trade, the Investment and Coordinating Board, the Ministry of Transportation, the Ministry of Health, the Food and Drug Supervisory Agency, the Financial Services Authority (OJK), Bank Indonesia (BI), and the Indonesian Ulema Council (MUI). These conditions result in over-regulation and policies that overlap with each other and have a tendency towards sectoral ego.

Legal Entity / Business Entity

Digital startups in Indonesia usually have a legal entity (Limited Liability Company / PT) or business entity (Commanditaire Vennootschap / CV). The establishment of a PT has a legal basis based on Law No.40/2007: "Limited Liability Company". Updated the rules of Law no. 11/2020 is named the Job Creation Law (UU CK) Article 109 concerning Limited Liability Companies. The legal basis for CV is Articles 15-35 KUHD.¹⁰ CV is specifically regulated in Articles 19, 20, and 21. where the provisions for the establishment of a CV are not legal entities. The advantages of a PT are that if a loss occurs it does not involve personal property, there is no time limit, the name of the business entity is protected by law, it is trusted and professional, and in the form of share ownership it is easy to transfer. Weaknesses of PT are compliance with GMS, tax obligations, and periodic financial reports. The advantages of CV are that the requirements and procedures for establishment are easier, the cost of establishment is cheaper, the capital is not determined, there are no provisions for business entity organs, there is a greater opportunity for borrowing credit from third parties, management can be diversified, and it is easier to develop. Disadvantages of CV are (responsibility is not limited to complementary partners and may involve personal assets, paid-up capital is difficult to withdraw, company survival is not guaranteed, complementary partners can make decisions without intervention from limited partners as capital depositors, so that no one has the authority to supervise.

Licensing

Startup establishments are required to at least arrange the following licensing documents:

- 1) Trade Business License (SIUP) for trading business. The application is based on "PP No. 24/2018" which discusses "Electronically Integrated Business Licensed Services or Online Single Submission (OSS)". The new legislation regarding SIUP is stated in Permendag No.7/2017: "Third Amendment to Permendag No. 36/2007 regarding SIUP. This permit is valid as long as the company runs its business.
- 2) The approval of "Intellectual Property Rights/IPR" is a must to provide protection for digital trademarks, products, services. IPR exclusive rights are intangible assets with high economic value which also increase according to the valuation of the business entity. Legal regulations Law no. 28/2014: "Copyright", UU No.29/2000: "Plant Variety Protection", UU No.30/2000: "Trade Secret", UU no. 31/2000: "Industrial

¹⁰ Republik Indonesia, "Kitab Undang-Undang Hukum Dagang (Wetboek van Koophandel Voor Indonesie)" (n.d.).

Design”, UU No.32/2000; “Integrated Circuit Layout Design”, UU No.14/2001: “Patent”, UU No.15/2001: “Mark”.¹¹

Protection for Business Competition

Competition law is an important tool for promoting economic efficiency and fostering an environment in which all business actors have equal access to resources.¹² Therefore, it is necessary to encourage the existence of business competition laws and regulations to implement the concept of law as a tool to encourage economic efficiency between business actors who manufacture and/or sell goods or services in an unethical, unlawful or anti-competitive manner. “The digital economy has a culture that is different from industry in general. Large companies that dominate the digital economy benefit from network effects. These companies can leverage existing data (big data) to gain a competitive advantage over their competitors. On the other hand, new entrepreneurs (new entrants) find it difficult to be able to compete with them. For this reason, protecting the level of competition in cyberspace is very important to keep the market open to competing business actors, new business actors and various new business models.”

Financial Transactions

Startup companies that want to develop transactional products (payment, transfer) and electronic money, the company must obtain a permit from Bank Indonesia (BI) or the Financial Services Authority (OJK) as a regulator.¹³ In order to obtain the permit, the company must meet the requirements as stipulated in POJK No. 38/POJK.03/2016 which was updated in POJK No. 13/POJK.03/2020 (Risk Management in the Use of IT in Commercial Banks), PADG NO. 21/ 18 /PADG/2019 (QR Indonesian Standard), PBI No. 20/6/PBI/2018 (concerning Electronic Money), PBI No. 14/2/PBI/2012 (Payment Using a Card), PBI No.19/10/PBI/2017 (APU PPT Payment System), PBI No. 14/23/2012 (Fund Transfers) and POJK 77/POJK.01/2016 (IT-Based Money Borrowing Services). With so many regulations governing these requirements, it has implications for companies' difficulties in obtaining permits from third parties.

Crowdfunding

Digital start-up companies (digital startups) can take advantage of the crowdfunding method to obtain funds from a large group of people where each individual provides a small amount of crowdfunding through a digital fund transfer managed by the manager of the crowdfunding site.¹⁴ In Indonesia, the crowdfunding method has also been implemented, for example in the Regulation of the Financial Services Authority of the Republic of

¹¹ Komang Redy. Permana, I Putu Hendika; Meinarni, Ni Putu Suci; Desnanjaya, I Gusti Made Ngurah; Radhitya, Made Leo; Winatha, *Pemanfaatan Teknologi Informasi Untuk Bisnis UMKM*, ed. I Ketut Setiawan (Denpasar: STMIK STIKOM Indonesia, 2021).

¹² Rezmia Febrina, “Persaingan Usaha Pada Era Digital Menurut Persepektif Hukum Persaingan Usaha,” *Jurnal Karya Ilmiah Multidisiplin (JURKIM)* 2, no. 1 (2022): 121–27.

¹³ Stephanie PD et al., “Mengelaborasi Hukum Positif Tertulis Indonesia Mengatur Startup,” *Prosiding SENAPENMAS*, no. 7 (2021): 1253, <https://doi.org/10.24912/psenapenmas.v0i0.15161>.

¹⁴ Ari, Cita Yustisia Serfiyani, and Septiana Prameswari, “URGENSI PENGATURAN KONSEP PERUSAHAAN RINTISAN DI RUU KEWIRUSAHAAN DALAM RANGKA PENGEMBANGAN PERUSAHAAN RINTISAN DI INDONESIA Ari Purwadi 1 , Cita Yustisia Serfiyani, 2 Septiana Prameswari 3,” *Jurnal Hukum Bisnis Bonum Commune* 4, no. 1 (2021): 13–24.

Indonesia Number 57 /POJK.04/2020 concerning Securities Offerings Through Information Technology-Based Crowdfunding Services (Securities Crowdfunding). This regulation replaces the Financial Services Authority Regulation Number 37/POJK.04/2018 concerning Crowdfunding Services Through Information Technology-Based Stock Offerings (Equity Crowdfunding). The replacement of this regulation is intended to expand access to funding for small and medium enterprises (SMEs) and start-up companies through fundraising through Crowdfunding Services, so that it can include offering securities other than equity securities in the form of shares. By regulating the crowdfunding method as a source of funding for business actors, startups in particular must make the most of it, because if funding challenges are not faced with good preparation, failure is a possibility that can occur.

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Venture Capital

Venture capital, which is a financing business through capital participation or financing for a certain period of time, is something that is important in the context of developing digital startups. Regulation of the Financial Services Authority (POJK) No.34/2018 concerning Revaluation for Main Parties of Financial Services Institutions, POJK No.35/2018 concerning PMV Business Conduct, and POJK No.36/2018 concerning Procedures for Examination in the Capital Markets Sector, not yet accommodate the provisions regarding the venture capital structure required by the startup industry and investors.¹⁶ As disclosed by the Treasurer of the Venture Capital Association for Indonesian Startups (Amvesindo) Edward Ismawan Chamdani, that the absence of regulations regarding the structure of venture funding has caused some legal partners such as notaries to become confused because venture funds do not yet have an NPWP and legal umbrella, so recording becomes confusing for investors. . Even though venture capital requires the ability to manage existing risks

¹⁵ Ari, Serfiyani, and Prameswari.

¹⁶ ADINDA PRATIWI, "PERLINDUNGAN TERHADAP INVESTOR ATAS KEPAILITAN PERUSAHAAN MODAL VENTURA (Studi Putusan No: 302 K/Pdt.Sus-Pailit/2015)," *UNIVERSITAS MUHAMMADIYAH SUMATERA UTARA MEDAN*, October 2022.

because startups have a high risk, in practice several startups such as Facebook, Twitter, Airbnb, and Tokopedia can develop, one of which is due to an injection of funds by venture capital companies.¹⁷

CONCLUSION

Information technology in Indonesia is growing rapidly, according to a survey conducted by the Indonesian Internet Service Providers Association (APJII) in 2016 internet users in Indonesia numbered 132.7 million or 52% of Indonesia's population. The high level of internet usage in Indonesia will certainly be in line with the growth of businesses that use the internet as their main part. Companies working on the internet are known as digital startups. Startups, which are often associated with the development of the technology and communications industry, basically do not have standard rules, both in terms of definitions and rules for applying technology. Startups in Indonesia have been on the rise for at least the last decade. This phenomenon is also seen in Gojek and Tokopedia which are popular among Indonesians. With the rapid growth of startups, of course there are challenges to start and grow, one of which is legal challenges. Before starting a business, entrepreneurs must study Indonesian entrepreneurship laws and regulations and learn about the obstacles they will face when starting a business and conducting business activities. In this way, the risk of entrepreneurial failure can be minimized. This study uses a qualitative approach to collect data and utilizes all the information on the subject matter. The researcher used the Desk Study method and used literature, articles, journals, scientific research, and internet pages related to the research being conducted as a source of research data. There are 7 important legal challenges that need to be known in building a digital startup, including: Regulation, Legal Entity / Business Entity, Licensing, Protection of Business Competition, Financial Transactions, Crowdfunding, and Venture Capital.

¹⁷ Budi Raharjo, "FINTECH TEKNOLOGI FINANSIAL PERBANKAN DIGITAL," *Penerbit Yayasan Prima Agus Teknik*, May 2021, 1–299.

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