LAW ENFORCEMENT OF BUSINESS REGISTRATION FOR BUSINESS AGENTS OF ELECTRONIC COMMERCE

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Abstract

Problems will arise when e-commerce businesses did not register their business to government so that considered as illegal by law, this will have an impact on consumer protection. The aim of the obligation of company registration was that the government can prepare and establish policy in order to provide guidance, development, and supervision of the business world as well as can be used to secure the state revenue in creating healthy and orderly business science. This type of research used in this study was normative juridical. This study not only used normative juridical approach, but also used the approach of legislation (Statute Approach), the historical approach as it will be seen on the basis of the legislation formation and comparative approach because it will be an issue with the licensing of the region concerned. The adjustment of e-commerce business license included some regulatory policies of Legislation, among others, namely the Law of trade, law of information and electronic transaction (IET) and the law on consumer protection. Every business agent is required to have a Business License in accordance with the provisions of Article 24 of the Law of trade, this provision resulted in any business activity must have a trade license both in small and large scale. The provisions of company registration should be enforced so that there is no dispute, when business agent violating these provisions there are penalties given either in the form of revocation of licenses or criminal penalties and fines which will be given in accordance with Article of 115 of Law of Commerce.

Keywords: Adjustment, license, Electronic Commerce
A. PRELIMINARY

1. Background

Internet users in Indonesia until today has reached 82 million of people. With this total, Indonesia was in the 8th ranked in the world. From the total number of Internet users, 80 percent of them are adolescents aged between 15-19 years. For Facebook users category, Indonesia was in the 4th ranked in the world. It cannot be denied that behind the benefits of the internet, it also caused much harm and alarming impact, such as pornography, cases of fraud, and violence which were all originated from the virtual world.1

The system provides simplicity in shopping. However, e-commerce must also had a lot of problems behind it, such as the problems of merchant locations that are sometimes not clear so that we as buyers became hesitant to buy the goods, not to mention the delivery of goods which do not conform with the order, duration of delivery and other problems. Therefore, it was necessary to formulate the regulation by the government authorities to protect the rights of buyers in e-commerce transactions.

Fraud under the guise of e-commerce buying and selling is rampant in Indonesia, some fraud cases were unrevealed because there are some conditions like2:

1. Most of the victims of fraud of e-commerce trading more did not make report to the authorities.

2. The absence of evidence of fraud of e-commerce trading because there were no reports from the victims.

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1Kemkominfo, Pengguna Internet di Indonesia capai 82 juta orang, https://kominfo.go.id/index.php/content/detail/3980/Kemkominfo%3A+Pengguna+Internet+dI+Indonesia+Capai+82+Juta/0 / beritasatker, accessed on September 7, at 11.00 am.

3. Difficulties if the website owner is outside the jurisdiction area of Indonesia.

4. The authorities had managed to track an IP address of the alleged perpetrator, but it was not so easy to know the identity and position of the perpetrator.

E-commerce business in Indonesia was not specifically regulated in the Law. There were no ordinance, transaction requirements, requirements for the establishment, the tax to be paid and other matters that regulate this activity. However, to minimize crime in the business of e-commerce, the government has made the Law on Information and Electronic Transactions (Law of IET) No. 11 of 2008. In the Law of IET, there are two major issues, which are:

1. Recognition of electronic transactions and electronic documents in the legal framework of the engagement and the laws of evidence, so that the legal certainty of e-commerce business can be assured.

2. Classified actions including qualifying law violations related to the misuse of Information Technology (IT), so there will be strict sanctions for those who violate the Law of IET.

In the Law of IET there are chapters and special provision that create a new rule in the field of electronic transactions which have no existed yet, they are Section V, Article 17 and Article 22. While the rules on e-commerce businesses are not specifically regulated in a Law. The existence of this Article is essential to provide protection and legal certainty for business users of e-commerce. Especially at this time the government will process the

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birth of government regulation in the field of Electronic Transactions.

Indonesia as a country of law, then it should be able to protect all the businesses involved in e-commerce actors both sellers and buyers. Sellers as the owner of the goods that are to benefit from these efforts, must be observed and monitored continuously by the government in order to protect transactions made by buyers and sellers. In Law of Trade Number 7 of 2014 contained in Article 24, namely:  

1) Entrepreneurs who undertake business activities are required to have licenses in the field of trade given by the Minister.  
2) The Minister may delegate or assign permissions to local government administration or certain technical offices.  
3) The Minister may grant exceptions to the obligation to have a license in the field of trade as referred to in paragraph (1).  
4) Further provisions on licensing in the fields of trade, as in paragraph (1) and the exceptions referred to in paragraph (3) shall be governed by the regulation.

The aim of company registering is that the government can prepare and establish policy in order to provide guidance, supervision and oversight of the business world at a time, also can be used as security for the state revenue in creating healthy business science and orderly. The government will also be easy to occasionally carefully follow the circumstances and the actual development of the business and corporate world.

The existence of a list of companies for the business world is so important in terms of preventing and avoiding practices dishonest business.

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4 Article 24 Verse 1-4 Law No 7 Year of 2014 OnCommerce  
5 Law No 3 of 1982, General Description
such as unfair competition, smuggling. For the entrepreneurs themselves, the registration of these companies will be considered as a necessity and not as an obligation solely. Further awareness is very necessary for entrepreneurs to register his company, so that the company will earn the trust of the community and will achieve a certainty.

To broaden their views on the opportunities for the business community, the government has issued a law that requires the registration for every company, so that business activities will become more sophisticated and at the same time will stimulate the growth of the business world in particular and the economy in general. The law is Law No. 7 of 2014 on Trade. List of Companies is a source of information on the identity mussels, status, solvency, bona fide and other important factors of a particular company. That kind of information is very important for any company that would conduct a transaction with another company to not fall into a device companies lacking bona fide and included in a ravine losses that are not easily corrected.6

Based on the Article 24 paragraph (1) of Act on trading that trade must be registered by the businessmen. The legal basis for registration of business licenses are included in the regulations of Trade Ministry Number 36/M-DAG/PER/9/2007 concerning the Issuance of Trading Business Licenses, although that Minister’s regulation has not yet been referred to the Law Number 7 of 2014 on Trade however it was still in continuous use for not contrary to the Law. In the Article 1 paragraph 2 which states that7:

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7The regulations of Trade Ministry Number 36/M-DAG/PER/9/2007 concerning
"Trading companies are any business form that is running business activities in the sector of trade which are fixed, ongoing, established, working and domiciled in the Republic of Indonesia territory, for the purpose of gain or profit"

Whereas in Article 1 paragraph 4 that:

Trading Business Licenses, hereinafter called the Business License is a license to be able to carry out business activities, hereinafter referred as License/SIUP.

In the Minister’s regulation also explained about the definition of businessmen that contained in Article 2 (1) and (2), namely:

1) Every company that did trade business shall have SIUP.
2) SIUP as referred to in paragraph (1) shall consist of:

a. Small Business License;
b. Intermediate License;
c. Large Business License;

In Article 4 paragraph (1), (2), (3) described also regarding exceptions to businessmen with the following criteria:

1) The obligation to have SIUP as stipulated in article 2 paragraph (1) excluded against:

a. The company's branch offices or representative offices of the company;
b. The Individual small companies are not legal entities or fellowship, managed, operated or managed by their owners or family members / closest relatives;
c. Itinerant traders, hawkers, roadside traders or street vendors.

2) The company referred to in paragraph (1) letter b and c can be provided SIUP if required concerned.

It can be concluded, that every trade either privately run
his / her own or through legal entities/companies that should be registered through the Ministry of Trade or the local governments appointed by the Minister of Trade, despite the exclusion of the SIUP however it’s still be required to be registered so that the regulation of the trade activities which is apparent by the Government. The Problems will arise when employers did not register the e-commerce business to government so that illegal trade legally. The Illegal trading business will have an impact on the protection of consumers (buyers) when the business is not registered so big chance occurrence of fraud and so forth.

Additionally exception entrepreneurs who are not required to have SIUP by the regulations of Trade Ministry Number 36/M-DAG/PER/9/2007 concerning the Issuance of Trading Business Licenses itself was contrary to the Law Number 7 of 2014 on Trade in Article 24 paragraph (1) which the obligations of registration of trade for businessmen, both large scale enterprises and entrepreneurs of small and medium scale. From the description of these issues, the authors interested in writing and lift the title of "LAW ENFORCEMENT OF BUSINESS REGISTRATION FOR BUSINESS AGENTS OF ELECTRONIC COMMERCE".

2. The Formulations Problem

How was law enforcement of business registration for business agents of electronic commerce?

B. THE RESEARCH METHODOLOGY

The study type used was normative juridical research. This study not only using the normative juridical approach, but also use the legislation approach (Statute Approach). The statutes are legislation and regulation. If so, approach to legislation is the approach with the use of

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legislation and regulation, the historical approach as it will be seen on the basis of the legislation formation that established and comparative approach because it would be seen on the licensing issues contained in the relevant area.

C. RESEARCH RESULT AND DISCUSSION

Penalties given if a party does not register the company based on the Law No. 3 of 1982 concerning on Corporate Registration Compulsory which states that:

Article 32 (1) any party under this Law and or according to the operational regulations must register his company within Company List and intentionally does not fulfill all the obligations will be sentenced for 3 (three) months imprisonment or fine as much as Rp. 3.000.000,- (three millions rupiahs). (2) Criminal act stated in point (1) is classified as a crime.

Article 33 (1) any party who commits or applies the registration incompletely in company registration will be sentenced as long as for 3 (three) months imprisonment or fine as much as Rp. 1.500.000,- (one million five hundred thousand rupiahs). (2) Criminal act stated in point (1) is classified as a crime.

Article 34 (1) any party who does not fulfill his obligations according to this law or operational regulations to meet or reject, to submit or apply the conditions and or other information for registration needs within Company List will be sentenced as long as for 2 (two) months imprisonment or fine as much as Rp. 1000.000,- (one million rupiah). (2) Criminal act stated in point (1) is classified as a crime.

Article 35 (1) if any legal party commits the criminal act stated in articles 32, 33, and 34 of this Law, then a legal pursuit will be given to the management or authority of the legal party. (2) Provision in point (1) of this article is applied the same to the
legal party that acts as or authority holder of other legal parties.

Law of commerce demands every business owner to register his company to ministry or delegated board concerning on licensing as it is stated in article 24 of Law No. 7 of 2014 concerning on Commerce. In the licensing regulation of commerce, there is exception for a business to not register for licensing according to the Regulation of Minister of Commerce No. 36/M-DAG/PEN/9/2007 Jo Regulation of Minister of Commerce No. 39/M-DAG/PEN/12/2011 concerning of the release of SIUP stated in article 4:

a. Branch office or representative office:
b. Small private company without legal bodies or alliance where all the operational is performed and managed personally by the owner or family members/relatives;
c. Peddlers, roundsman and sidewalk sellers.

The classification of sellers mentioned above, that require or do not require according to government, can be seen in commercial business segments electronically based on the e-commerce done by those parties such as Marketplace e-commerce, classified Ad, Daily Deals, and Retail e-commerce. For those kinds of business, SIUP and certificate of reliability are needed since those business are classified as capital and asset business oriented. While e-commerce businesses that do not need SIUP and certificate of reliability are those that just connect the consumers to producers, consumers to consumers, and reseller/consumers to main provider, the promotion system can be via social media (facebook, path, instagram, etc.).
The regulation of registration for e-commerce business is stated in article 2 paragraph (1) of the Regulation of Minister of Commerce No. 36/M-DAG/PER/9/2007 Jo Jo Regulation of Minister of Commerce No. 39/M-DAG/PER/12/2011 concerning the release of SIUP that oblige every business company to have SIUP.

After company owns the SIUP, then it should consider the regulations stated in the Law of ITE and the Law of Commerce that demand the business owner to provide the information for Electronic System Users\(^9\) about:

a) Identity of Electronic System Provider;
b) Transactional objects or products;
c) Feasibility or safety of Electronic System;
d) Devices instruction manual;
e) Conditions of contract;
f) Procedures of agreement;
g) Privacy guarantee/ personal information Protection.

Besides, in agreement of transaction, e-commerce business owners have to provide the feature of electronic system characteristics that cover minimum commands of:

a) Edit/correction;
b) Cancel;
c) Confirmation/reconfirmation;
d) Next step or Stop for current activity;
e) Review for other offering contracts or advertisements;
f) Review the status for success or fail transaction; and
g) Review the agreement terms and conditions before the transaction.

Related to business owners that sell products or services out of the features prescribed as it is mentioned in Article 65 paragraph (6) of Law No. 7 of 2014 on Commerce which states that if any e-commerce business owners sell products or services without providing a complete and reliable information related to the products or services then they

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\(^9\)Article 25. Government Regulation No. 82 of 2011 concerning on Technical Procedure of electronic transaction system
would get administrational penalty of licensing termination. Moreover, in article 65 paragraph (2) of Law No. 7 of 2014 concerning on e-commerce sellers that sell products/services out of the features/information prescribed will be sentenced for 12 months in imprisonment and/or fine as much as Rp. 12.000.000.000,- (twelve billions rupiahs).

The purposes of regulation of company registration for e-commerce business owner are to provide safety and assurance for consumers in electronic transaction and to avoid any loss in the behalf of both consumers and producers.

D. CLOSING
1. Conclusion

Every business owner is obligated to have SIUP as it is stated in Article 24 of Law No. 7 of 2014 concerning on Commerce, this regulation obligates every business in small and big scale to have business license. As the reinforcement for the regulation and to avoid any lawsuit in the future, the violation of the regulation will cause penalty of licensing termination, imprisonment, and fine as it is mentioned in Article 115 of Law No. 7 of 2014 concerning on Commerce.

2. Suggestion

Regulation stated in Laws related to electronic commerce needs business classification for e-commerce businesses, this is due to SIUP regulation seems less objective to e-commerce business owners compare to other businesses in general. It suggested to classify which e-commerce business that is obligated to have license and which is not.

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